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ARIZONA-FLORIDA LAND EXCHANGE ACT OF 1988

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

AND THE

SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2420

TO PROVIDE FOR THE DISPOSITION OF CERTAIN LANDS IN ARIZONA UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR BY MEANS OF AN EXCHANGE OF LANDS, AND FOR OTHER PURPOSES

JULY 25, 1988
WASHINGTON, DC

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ARIZONA-FLORIDA LAND EXCHANGE ACT OF 1988

MONDAY, JULY 25, 1988

U.S. Senate, Select Committee on Indian Affairs, and Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources,

Washington, DC.

The committees met, pursuant to notice, at 2:10 p.m., in room 485, Russell Senate Office Building, Hon. Dennis DeConcini (acting chairman of the Select Committee on Indian Affairs) presiding.

Present from the Select Committee on Indian Affairs: Senators DeConcini and McCain.

Present from the Committee on Energy and Natural Resources: Senator Bumpers.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Senator DeConcini. The joint committees will come to order, the Select Committee on Indian Affairs, and the subcommittee of the Committee on Energy and Natural Resources, chaired by the distinguished Senator from Arkansas, Senator Bumpers. Senator Inouye, the chairman of this committee, will be arriving later this afternoon.

First I want to thank both of our chairmen—Senator Bumpers, for taking the time to schedule these hearings; he is chairman of the Public Lands Subcommittee of the Committee on Energy, and of course, Senator Inouye, who has a reputation second to none in his interest in and commitment to Indian affairs. They both know how important it is to give everyone the chance to comment on S. 2420, The Arizona-Florida Land Exchange Act of 1988. As chairmen of the committees with jurisdiction over the critical part of S. 2420, they take great interest in the testimony that we will be receiving this afternoon.

[The text of S. 2420 follows:]

II

100TH CONGRESS
2D SESSION

S. 2420

To provide for the disposition of certain lands in Arizona under the jurisdiction of the Department of the Interior by means of an exchange of lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20 (legislative day, MAY 18), 1988

Mr. MCCAIN (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 28, 1988

Ordered, referred jointly to the Committees on Energy and Natural Resources, Indian Affairs, and Veterans' Affairs with instructions that if the Committee on Energy and Natural Resources orders the bill to be reported, the other committees have twenty calendar days to report or be discharged

---

A BILL

To provide for the disposition of certain lands in Arizona under the jurisdiction of the Department of the Interior by means of an exchange of lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arizona-Florida Land Exchange Act of 1988".

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) The term "Administrator" means the Administrator of the Veterans Administration.

(2) The term "Arizona Intertribal Trust Fund" means the fund established pursuant to section 202(a)(1) of this Act in the Treasury of the United States for the benefit of Arizona Tribes that were members of the Intertribal Council of Arizona on January 1, 1988, and the members of such Tribes.

(3) The term "Arizona Tribe" means an Indian tribe that has a reservation located partially or totally in the State of Arizona.

(4) The term "City" means the City of Phoenix, Arizona;

(5) The term "Collier" means the nongovernmental parties to the Exchange Agreement identified in the Exchange Agreement as Barron Collier Company and Collier Enterprises.

(6) The term "Exchange Agreement" means the Agreement Among the United States, Collier Enterprises and the Barron Collier Company, executed on , 1988, and subsequently submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(7) The term "Florida Lands" means the lands that would be conveyed to the United States by Collier under the terms of the Exchange Agreement or this Act, and other lands owned by Collier and located within the boundaries of the Florida Panther National Wildlife Refuge to be acquired by purchase by the United States and managed as part of such Refuge, other than those lands identified for conveyance to the United States pursuant to agreements for purchase and sale of such lands executed by Collier prior to January 1, 1988.

(8) The term "Intertribal Council of Arizona" or "ITCA" means the corporation organized and existing under the laws of the State of Arizona under the name Intertribal Council of Arizona, Inc., or a successor to such corporation organized and existing under the laws of the State of Arizona, the membership of which includes thirteen or more of the Arizona Tribes that were members of the ITCA on January 1, 1988.

(9) The term "Land Exchange" means the transaction providing for the acquisition by the United States of title lands in Florida owned by Collier and the receipt by the United States of Monetary Proceeds in exchange for the acquisition by Collier of title to land within the School Property.

(10) The term "Monetary Proceeds" means either—

(A) the amount required to be paid to the United States by Collier upon closing of the Land Exchange in accordance with paragraphs 13 through 15 of the Exchange Agreement, or

(B) the amount required to be paid to the United States by a Purchaser other than Collier upon closing of the Purchase Transaction, less the amount required to be paid from the account for acquisition of the Florida Lands and reimbursement of costs established under section 101(i) of this Act.

(11) The term "Navajo Education Trust Fund" means the fund established pursuant to section 201(a)(2) of this Act in the Treasury of the United States for the benefit of the Navajo Tribe and its members.

(12) The term "Phoenix Exchange Property" means the land within the School Property to be conveyed to a Purchaser under the Land Exchange or the Purchase Transaction, which land shall be the School Property less any parcel of land to be conveyed to the City of Phoenix or the State of Arizona or transferred to the Veterans Administration upon closing of the

Land Exchange or Purchase Transaction pursuant to section 101 of this Act.

(13) The term "Planning and Zoning Agreement" means the Memorandum of Agreement between the City of Phoenix, Arizona, Collier Enterprises and Barron Collier Company approved by the City Council of Phoenix, Arizona, on July 1, 1987, including any amendments or modifications of such Memorandum of Agreement subsequently agreed to by the parties, or, as the context may require, an agreement between the City of Phoenix, Arizona, and a Purchaser other than Collier that is identical in all material respects to such Memorandum of Agreement.

(14) The term "Public Planning Process" means the land use planning and zoning process applicable to the School Property under the Planning and Zoning Agreement or other State or local law and regulation applicable to the planning and zoning of such property.

(15) The term "Purchase Transaction" means the cash purchase of the Phoenix Exchange Property by a Purchaser other than Collier under section 101(h) of this Act.

(16) The term "Purchaser" means Collier or, in the event that Collier does not accept the offer of the United States to acquire the Phoenix Exchange Prop-

erty under section 101(h) (6) and (7) of this Act, any other person that acquires the Phoenix Exchange Property under a Purchase Transaction.

(17) The term "School Property" means the real property used by the Secretary on January 1, 1988, for the Phoenix Indian High School in Phoenix, Arizona.

(18) The term "Secretary" means the Secretary of the Interior.

(19) The term "Trust Fund Payment" means the payment to the United States of the Monetary Proceeds for deposit into, as the context requires, the Arizona Intertribal Trust Fund or the Navajo Trust Fund, in the form of a lump sum payment or annual payments as determined under section 102 of this Act.

(20) The term "Trust Fund Payment Agreement" means an agreement providing for payment by the Purchaser of annual Trust Fund Payments for deposit into the Arizona Intertribal Trust Fund or the Navajo Trust Fund, or, as the context may require, an agreement between the United States and a Purchaser other than Collier that is identical in all material respects to such Trust Fund Payment Agreement.

(21) The term "Trust Income" to the Arizona Intertribal Education Trust Fund or the Navajo Edu-

cation Trust Fund means the interest earned on amounts deposited into each such trust fund and any amounts paid into each such trust fund in the form of annual Trust Fund Payments.

(22) The term "Veterans Administration Property" means the property adjacent to the School Property under the administrative jurisdiction of the Veterans Administration on January 1, 1988.

TITLE I

SEC. 101. DISPOSITION OF SCHOOL PROPERTY.

(a) AUTHORIZATION OF DISPOSAL.—The Secretary is authorized to dispose of the School Property and use the Monetary Proceeds only in accordance with this Act. The provisions of this Act shall govern the disposal of such property and other provisions of law governing the disposal of Federal property shall not apply to the disposal of the School Property.

(b) EXCHANGE AGREEMENT.—The Exchange Agreement is ratified and confirmed and sets forth the obligations, duties, and responsibilities of the parties to the Exchange Agreement. The Secretary shall implement the Exchange Agreement in accordance with its terms and conditions; except that, the Secretary may, with the concurrence of Collier, make minor and technical amendments in land descriptions and instruments of conveyance, as set forth in the agreement, upon 30 days prior written notice to the House Interior and Insular Affairs and Senate Energy and Natural Resources Committees.

(c) CONVEYANCE OF LANDS; TRANSFER OF JURISDICTION.—If the Phoenix Exchange Property is conveyed under the Land Exchange or a Purchase Transaction, the Secretary is authorized and directed, subject to the requirements of this section, to—

(1) convey to the City by quitclaim deed a parcel of 20 acres of the School Property upon election by the City to accept such conveyance under subsection (e);

(2) transfer administrative jurisdiction of a parcel of no more than 11.5 acres of the School Property to the Veterans Administration upon election by the Veterans Administration to accept such administrative jurisdiction under subsection (f); and

(3) convey to the State of Arizona by quitclaim deed a parcel of no more than 4.5 acres of the School Property upon election by the State of Arizona to accept such conveyance under subsection (g).

(d) PRELIMINARY NOTICE.—On a date no later than 90 days prior to acceptance by Collier of the offer of the United States under the Exchange Agreement, Collier shall provide preliminary notice in writing of its intent to accept such offer to—

(1) the Secretary;

(2) the Mayor of the City;

(3) the Administrator of the Veterans Administration.

(4) the Intertribal Council of Arizona;

(5) the governing body of the Navajo Tribe; and

(6) the Governor of the State of Arizona.

The provision of this preliminary notice by Collier shall not affect Collier's right to accept or not to accept the offer of the United States under the Exchange Agreement and in accordance with subsection (h)(7).

(e) ELECTION BY CITY.—(1) Within 30 days after receipt of notice to the Mayor of the City under subsection (d), the City may advise the Secretary in writing that it elects to accept conveyance of a parcel of 20 acres of land within the School Property identified for conveyance to the City by mutual agreement with Collier in accordance with the Public Planning Process.

(2) On or after conveyance of the Phoenix Exchange Property under the Land Exchange or Purchase Transaction, the Secretary shall convey to the City such parcel of 20 acres of the School Property as the City may elect to receive under paragraph (1), subject to the requirements of this section. If

the City and the Purchaser have not identified 20 acres for conveyance to the City in accordance with the Public Planning Process at the time of closing of the Land Exchange or the Purchase Transaction, the Secretary shall convey to the City a parcel of land consisting of the northernmost twenty acres of the School Property.

(3) Nothing in this Act shall be construed as a limitation on the authority of the Purchaser and the City to enter into agreements to exchange, on an acre-for-acre basis, land within the School Property conveyed to the Purchaser for land conveyed by the United States to the City or owned by the City contiguous to the School Property.

(4) Any conveyance to the City by the United States under this subsection shall include the requirement for a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation.

(5) Any conveyance by the Purchaser to the City of land within the School Property pursuant to exchange shall include a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation. The conveyance by exchange of land to the Purchaser from the City shall extinguish any right of reverter restricting the use of land so conveyed to the Purchaser.

(6) Nothing in this subsection shall be construed to alter any right of the City to purchase additional acres of land within the School Property from the Purchaser pursuant to the Planning and Zoning Agreement or as may otherwise be agreed to by the City and the Purchaser.

(f) ELECTION BY VETERANS ADMINISTRATION.—(1) Within 30 days after receipt of notice by the Administrator under subsection (d), the Administrator may advise the Secretary that it elects to receive administrative jurisdiction of a parcel of land within the School Property of no more than 11.5 acres, which parcel is determined by the Administrator to be necessary for expansion of the Veterans Administration Medical Center in Phoenix, Arizona: *Provided,* That such parcel shall be compact and contiguous to the Veterans Administration Property and in no event shall the western boundary of such parcel be located to the west of the eastern boundary of Third Street at the point of its intersection with Indian School Road as that intersection was located on January 1, 1988.

(2) Upon conveyance of the Phoenix Exchange Property under the Land Exchange or the Purchase Transaction, the Secretary shall transfer administrative jurisdiction of the parcel of land that the Veterans Administration elects to receive under paragraph (1): *Provided,* That, subsequent to such conveyance, the Purchaser and the Veterans Adminis-

tration may enter into agreements to exchange, on an acre-for-acre basis, land within the School Property conveyed to the Purchaser for land transferred to the Veterans Administration under this paragraph.

(3) The Administrator is hereby authorized and directed to cooperate with the City in the planning and development of its use of land within the School Property for the purpose of ensuring comprehensive planning and zoning and efficient and productive use of the School Property, in accordance with the objectives of the Public Planning Process: *Provided, however,* That the Administrator shall have the final authority to determine the exact location and configuration of the land to which the Veterans Administration was transferred administrative jurisdiction under paragraph (2), subject to the limitations in paragraph (1).

(4) Six months after the date of enactment of this Act, and every 6 months thereafter until expansion of the Veterans Administration Medical Center in Phoenix, Arizona, is completed, the Administrator is directed to report to the Congress on the Veterans Administration's efforts in cooperation with the City in planning and development of land within the School Property as required under paragraph (4). Such reports shall be submitted to the House of Representatives Committees on Interior and Insular Affairs and Veterans Affairs and the Senate Committees on Energy and Natural Re-

sources and Veterans Affairs, and shall describe plans for use of the land to be transferred to the Veterans Administration, the need for additional Federal legislation authorizing and appropriating funds for expanded programs and facilities expected to be located on such land, and the expected relationship of such use to the comprehensive planning and zoning of the School Property under the Public Planning Process.

(5) The Administrator is hereby authorized to enter into leasing or other arrangements respecting ownership, management or control of land within the School Property with the City or the Purchaser to facilitate comprehensive planning and zoning and efficient and productive use of the School Property.

(g) ELECTION BY STATE.—(1) Within 30 days after receipt of notice to the Governor of the State of Arizona under subsection (d), the Governor may advise the Secretary in writing that the State of Arizona elects to accept conveyance of a parcel of land contiguous to the parcel of land elected to be accepted by the Veterans Administration under subsection (f) and identified by mutual agreement of the City of Phoenix, Collier and the State of Arizona in accordance with the Public Planning Process for use by the State of Arizona as a site for facilities to be owned and operated by the State of Arizona as a home for veterans. If such parcel is not identified for conveyance to the State of Arizona in accordance with the Public Planning Process at the time of the closing of the Land Exchange or the Purchase Transaction, the Secretary shall convey to the State of Arizona a parcel of land consisting of the northeasternmost 4.5 acres south of the northernmost 20 acres of the School Property.

(2) On or after conveyance of the Phoenix Exchange Property under the Land Exchange or the Purchase Transaction the Secretary shall convey to the State of Arizona the parcel of land elected to be received by the State of Arizona under paragraph (1) of this subsection, subject to the requirements of this subsection.

(3) Any conveyance of land to the State of Arizona under this subsection shall contain a right of reverter in favor of the United States: (A) restricting the use of such land to use as a site for facilities owned and operated by the State of Arizona as a home for veterans; and (B) providing for reversion of title to such land to the United States in the event that the State of Arizona fails to submit proper application to the Veterans Administration for assistance in construction of State home facilities pursuant to 38 U.S.C. 5035 and to appropriate sufficient funds to pay for that portion of the costs of construction for such facility required to be paid by the State of Arizona pursuant to 38 U.S.C. 5035.

(4) In the event that title to such land reverts to the United States, such land shall be offered by the Secretary for

sale to the City, subject to a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation, at a price determined by the Secretary which shall be representative of the value of such land discounted to account for such restrictions in use. In the event that the City does not accept the offer of the United States to purchase such land within 6 months from the date such offer is made, such land shall be offered for sale to the Purchaser at fair market value.

(5) Nothing in this Act shall be construed as a limitation on the authority of the Purchaser and the State of Arizona to enter into agreements to exchange, on an acre-for-acre basis, lands within the School Property conveyed to the Purchaser for land conveyed by the United States to the State of Arizona.

(6) Any conveyance by the Purchaser to the State of Arizona of land within the School Property pursuant to exchange, on an acre-for-acre basis, shall include a right of reverter in favor of the United States in accordance with the terms for such right of reverter described in paragraph (3) of this subsection. The conveyance by exchange of land to the Purchaser under this paragraph shall extinguish any right of reverter restricting the use of land so conveyed to the Purchaser.

(h) OFFERS TO PURCHASE.—(1) Upon receipt by the Secretary of notices of election to receive parcels of land by the City of Phoenix, the State of Arizona, and the Veterans Administration under subsections (e), (f), and (g), but in no event later than 45 days after receipt of preliminary notice to the Secretary by Collier under subsection (d), the Secretary shall publish notice that the Secretary will consider offers by persons other than Collier to purchase the Phoenix Exchange Property, subject to the requirements of this section.

(2)(A) Notice under paragraph (1) shall be published in the Federal Register and shall otherwise be advertised in newspapers of general circulation and other appropriate publications, including newspapers in Phoenix, Arizona. Such notice shall include—

(i) an accurate description of the Phoenix Exchange Property, and an identification of any parcels of land within the School Property elected for conveyance or administrative transfer to the City of Phoenix, the Veterans Administration or the State of Arizona pursuant to subsections (e), (f), and (g);

(ii) the name and address of State and local offices from which information concerning the zoning and other legal requirements applicable to such property may be obtained;

(iii) a description of the terms and conditions for purchase of the Phoenix Exchange Property established under this Act pursuant to which the Secretary may accept an offer to purchase the Phoenix Exchange Property;

(iv) a statement of the minimum price that the Secretary may accept for sale of the Phoenix Exchange Property under paragraph (4) of this subsection;

(v) a description of the other terms and conditions for purchase of the Phoenix Exchange Property that the Secretary determines are necessary to ensure that the rights and obligations of a Purchaser under this section are comparable in all material respects to the rights and obligations of Collier under the Exchange Agreement, except as otherwise provided in this Act;

(vi) a statement establishing requirements for deposit of bond or other guarantee of credit in an amount determined by the Secretary; and

(vii) any other information that the Secretary, in his discretion, determines is reasonably necessary to permit a bona fide potential purchaser to evaluate the terms and conditions for purchase of the Phoenix Exchange Property.

(B) Upon request, the Secretary shall make available to any potential purchaser a copy of the Exchange Agreement or any other document in the possession of the Secretary which the Secretary in his discretion determines is reasonably necessary to permit a bona fide potential purchaser to evaluate the proposal of the United States to sell the Phoenix Exchange Property.

(3) Any person seeking to acquire the Phoenix Exchange Property by purchase under this section shall, within 30 days after publication of notice in the Federal Register under paragraph (1), deliver to the Secretary in the form prescribed in such notice, a written offer to purchase the Phoenix Exchange Property which offer shall—

(A) offer to purchase the entire Phoenix Exchange Property for cash in a single transaction at a price greater than the minimum acceptable price established under paragraph (4);

(B) by its terms be irrevocable for a period of at least 120 days from the date such offer is delivered to the Secretary and be legally binding on the offeror upon acceptance of such offer by the United States;

(C) offer to enter into a Purchase Agreement with the United States under the terms and conditions for purchase of the Phoenix Exchange Property described in the notice by the Secretary under paragraph (2);

(D) contain an offer to the United States to enter into a Trust Fund Payment Agreement which is in a form prescribed by the Secretary consistent with the requirements for payment of the Trust Fund Payment in the form of annual payments under section 102 and which is legally binding upon the offeror upon election of the Secretary to receive payment of the Monetary Proceeds in the form of annual payments under section 7 of this Act, including: (i) a detailed description of the collateral to be provided by the offeror to secure the payment obligation under the Trust Fund Payment Agreement upon such election of the Secretary to receive payment in the form of annual payments, and (ii) evidence of ownership and value of such collateral sufficient to permit the Secretary to determine whether such collateral is adequate to secure the payment obligations of the Purchaser under the Trust Fund Payment Agreement;

(E) contain evidence that the offeror has made an offer to the City of Phoenix, legally binding by its terms on the offeror upon approval by the City Council of Phoenix, Arizona, to enter into the Planning and Zoning Agreement;

(F) contain full and substantial evidence of the capacity of the offeror to enter into and perform each of the obligations required to be undertaken by the offeror under the terms described by the Secretary in accordance with paragraph (2) including a description of any financing arrangements to be undertaken by the offeror in order to perform the payment obligation of the Purchaser upon closing of the Purchase Transaction;

(G) meet any other requirements prescribed by the Secretary in the notice published under paragraph (1) which are reasonably necessary to ensure that any offer accepted by the United States under this subsection will provide public benefits to the United States comparable to those provided to the United States under the Land Exchange; and

(H) be accompanied by the deposit of a bond or other guarantee consistent with the requirements prescribed by the Secretary under paragraph (2).

(4) The minimum acceptable price for sale of the Phoenix Exchange Property is a cash amount equal to the sum of the amount required to be deposited into the account for purchase of the Florida Lands and reimbursement of costs under subsection (i) and an amount equal to the amount required to be paid by Collier under paragraphs 13 and 14 of the Exchange Agreement.

(5)(A) The Secretary shall review any offer to purchase the Phoenix Exchange Property delivered to the Secretary within 30 days after publication of notice under paragraph (1) for the purpose of determining whether such offer meets the requirements under paragraph (3) or other requirements set forth in the notice of the Secretary pursuant to paragraph (2). The Secretary shall identify for consideration as qualifying offers all such offers that meet such requirements subject to the limitations of subparagraph (B).

(B) In determining whether an offer is a qualifying offer under this paragraph, the Secretary shall exclude from consideration any offer that the Secretary in his discretion determines—

(i) does not meet the requirements set forth in the notice of the Secretary pursuant to paragraph (2);

(ii) is made by an offeror without adequate capacity to enter into or perform the payment obligations under this Act or the Trust Fund Payment Agreement; or

(iii) has failed to identify collateral that is adequate to secure the obligations under the Trust Fund Payment Agreement.

(C) The Secretary shall, within 45 days after publication of notice in the Federal Register, select from among the qualifying offers the best qualifying offer, which shall be the single offer from among the qualifying offers that contains an offer to pay to the United States the highest lump sum cash payment upon closing of the Purchase Transaction: *Provided*, That nothing in this paragraph shall be construed to limit or alter the right of the Secretary to elect to receive payment of the Monetary Proceeds in the form of annual payments under section 7 of this Act.

(6) Within 45 days after publication of notice in the Federal Register under paragraph (1), the Secretary shall advise Collier whether the Secretary has identified a qualifying offer or offers. In the event that the Secretary has not identified any such qualifying offer, he shall advise Collier that Collier may accept the offer of the United States to Collier under the terms of the Exchange Agreement and this Act. In the event that the Secretary has identified a qualifying offer, the Secretary shall provide Collier with a copy of the best qualifying offer, and shall advise Collier that Collier may accept the offer of the United States under the Exchange Agreement subject to the requirement that Collier pay, rather than the amount required to be paid under paragraphs 13 and 14 of the Exchange Agreement, the difference between the price to be paid under the best qualifying offer and $45,100,000.

(7) Collier may accept the offer of the United States by notice to the Secretary within 30 days of receipt of notice under paragraph (6) that Collier accepts such offer under the terms of the Exchange Agreement and subject to the require-

ment, if any, for additional payment under paragraph (6). If Collier accepts the offer of the United States under this paragraph, closing of the Land Exchange shall occur under the terms of the Exchange Agreement and this Act.

(8) If Collier does not accept such offer, the Secretary shall accept the best qualifying offer. If no qualifying offer has been received within the period specified in paragraph (3), the Secretary shall maintain the School Property in accordance with subsection (l) and shall notify the Committee on Interior and Insular Affairs and the Committee on Veterans Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within 60 days of the Secretary's notice to Collier under paragraph (6). Closing of the Purchase Transaction under this subsection shall occur within 90 days after acceptance by the United States of the best qualifying offer, subject to the requirements respecting deposit of payment under subsection (i).

(9) No action of the Secretary under this subsection shall be subject to the provisions of 5 U.S.C. 553 through 558 or 701 through 706.

(i) ACCOUNT FOR PURCHASE TRANSACTION AMOUNTS.—(1) Upon closing of the Purchase Transaction, there shall be established in the Treasury of the United States an account into which shall be deposited from the amount paid to the United States under the Purchase Transaction, at the direction of the Secretary, an amount equal to the sum of—

(A) $49,400,000, less any amount received by Collier in consideration of the conveyance to the United States of any portion of the Florida Lands prior to the closing of the Purchase Transaction, and

(B) an amount equal to the costs determined by the Secretary as reimbursable to Collier under paragraph (2), based on information to be provided to the Secretary by Collier at the time that Collier provides preliminary notice under subsection (d).

(2) For purposes of this subsection, reimbursable costs of Collier shall include—

(A) all costs, including fees for attorneys and consultants, paid or incurred by Collier in connection with the Public Planning Process and planning and zoning of the School Property, and

(B) an amount for compensation of general administrative costs and overhead, which shall be an amount equal to the costs reimbursable to Collier under subparagraph (A) multiplied by a factor of 0.8.

(3) Upon conveyance by Collier to the United States of title to the Florida Lands pursuant to this subsection, the Secretary shall cause to be paid to Collier from the account

established under paragraph (1): (A) $49,400,000, less any amount previously paid to Collier by the United States in consideration of conveyance of any portion of the Florida Lands, and (B) an amount equal to the total amount of costs reimbursable to Collier under this subsection, as determined by the Secretary.

(j) CONVEYANCE OF TITLE.—Upon conclusion of the procedures under subsection (h), the Secretary is authorized and directed to release and quitclaim to the Purchaser all right, title, and interest of the United States to the Phoenix Exchange Property.

(k) LANDS NOT ACCEPTED BY VETERANS ADMINISTRATION OR STATE OF ARIZONA.—If the Veterans Administration elects to accept transfer of administrative jurisdiction of fewer than 11.5 acres of land pursuant to subsection (f) or if the Governor of the State of Arizona elects to accept conveyance of fewer than 4.5 acres of land pursuant to subsection (g), the Secretary shall offer to sell those acres of land not accepted by the Veterans Administration or the State of Arizona to the City, subject to a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation, at a price determined by the Secretary which shall be representative of the value of such land discounted to account for such restrictions in use. If the City does not, within 30 days of the offer, notify the Secretary that it will accept such offer, the Secretary shall offer to sell those acres of land to Purchaser at the higher of fair market value or $1,170,000 per acre.

(l) Reversion.—Any land within the School Property not conveyed to the Purchaser, the State of Arizona or the City or transferred to the Veterans Administration upon closing of the Land Exchange or the Purchase Transaction or which reverts to the United States under section 101(e)(4) or 101(g)(4) of this Act and is not sold to the City or the Purchaser shall be maintained under the administrative jurisdiction, management and control of the National Park Service and shall not be disposed of until authorized by an Act of Congress: *Provided, however,* That such lands shall not be considered a unit of the National Park System.

(m) Other VA Lands.—If at any time subsequent to closing of the Land Exchange or the Purchase Transaction the Administrator determines that any portion of the land transferred to the Veterans Administration is not necessary for expansion of Veterans Administration programs and facilities, such land shall be offered to the City, subject to a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation, at a price determined by the Secretary which shall be representative of the value of such land discounted to account for such restrictions in use. If the City does not, within 30 days of the offer, notify the Secretary that it will accept such offer, the Secretary shall offer to sell those acres of land to the Purchaser at the higher of fair market value or $1,170,000 per acre. In the event that the Purchaser does not purchase such land, such land shall be maintained by the Veterans Administration and shall not be disposed of until authorized by an Act of Congress.

(n) RESERVATION OF RIGHT-OF-WAY.—The Secretary shall reserve from any conveyance to the City or the State of Arizona or from any administrative transfer to the Veterans Administration an access right-of-way of no less than 45 feet but no greater than 60 feet in width for conveyance to the Purchaser for ingress and egress to the Phoenix Exchange Property or other property conveyed to the Purchaser within the School Property, as such easement or easements may be identified for such conveyance in the Public Planning Process by mutual agreement of the parties.

(o) ACCESS.—In the event the State of Arizona elects to accept conveyance of a parcel of land under subsection (g), the Veterans Administration shall provide to the State of Arizona reasonable access to such parcel of land across the Veterans Administration Property or across other land within the School Property transferred to the Veterans Administration under subsection (f).

(p) EASEMENT.—Notwithstanding any other provision of law, the Secretary, on behalf of the United States, shall, at the time of conveyance to Purchaser under the Exchange Agreement or a Purchase Transaction, convey to Purchaser an easement of no less than 45 feet but no greater than 60 feet in width across the north end of the Veterans Administration Property as necessary to provide ingress and egress to the Phoenix Exchange Property from 7th Street.

(q) STATE AND LOCAL AUTHORITY.—Nothing in this Act shall be construed to supersede, abrogate, enlarge, diminish, or otherwise alter the exercise of authority of the State of Arizona, the City or other State and local authority with respect to planning and zoning of the School Property under applicable State or local law.

SEC. 102. PAYMENT TO THE TRUST FUNDS.

(a) DEPOSIT OF MONETARY PROCEEDS.—The Monetary Proceeds shall be paid to the United States for deposit in the Arizona Intertribal Trust Fund and the Navajo Trust Fund in accordance with this section and section 202 of this Act.

(b) ELECTION OF LUMP SUM OR ANNUAL PAYMENTS.—Subject to the requirements for consultation under subsection (c)(3), the Secretary may, in his discretion, elect to receive the Trust Fund Payment for deposit in the Arizona Intertribal Trust Fund or the Navajo Trust Fund, or both, in the form of either a lump sum payment or 30 annual payments, calculated in accordance with subsection (c). The Secretary shall provide notice of such election to the Purchaser within 90 days after receipt of notice from Collier that it intends to accept the offer of the United States under the Exchange Agreement pursuant to section 101(d).

(c) METHOD OF PAYMENT.—(1) If the Secretary elects to receive a Trust Fund Payment in the form of a lump sum payment, the Purchaser shall, at the time of closing, pay to the United States an amount equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made.

(2) If the Secretary elects to receive a Trust Fund Payment in the form of annual payments, the Purchaser shall make—

(A) 30 annual payments equal to the interest due on an amount equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made; and

(B) at the time of the last annual payment, a payment equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made.

(3) Prior to making any election as to form of the Trust Fund Payment under this subsection, the Secretary shall consult with—

(A) the Intertribal Council of Arizona, concerning the form of the Trust Fund Payment to the Arizona Intertribal Trust Fund; and

(B) the governing body of the Navajo Tribe, concerning the form of the Trust Fund Payment to the Navajo Trust Fund.

(4) If the Secretary elects to receive a Trust Fund Payment in the form of annual payments under subsection (c)(2), the Secretary is directed to execute the Trust Fund Payment Agreement pursuant to which such annual payments will be made.

(5) The interest rate to be used in determining the interest due on annual Trust Fund Payments payable by the purchaser shall be the interest rate being offered on bonds payable in 30 years sold by the United States on the date that notice of the election of the form of the Trust Fund Payment is made by the Secretary plus 0.25 percent, except that in no event shall such interest rate be lower than 8.5 percent or higher than 9.0 percent.

(6) Closing of the Land Exchange or the Purchase Transaction shall occur no sooner than 90 days after notice of the Secretary's election is provided to the Purchaser,

except that if the Secretary elects to receive a Trust Fund Payment in the form of annual payments under subsection (c)(2), closing of the Land Exchange or the Purchase Transaction shall not occur unless Trust Fund Payment Agreement has been executed.

(d) CASH PROCEEDS.—Any cash proceeds to the United States from the sale of land within the School Property offered to and accepted by the City or the Purchaser subsequent to closing of the Land Exchange or the Purchase Transaction shall be in the form of a lump sum payment, unless otherwise agreed to by the parties, payable to the United States for deposit into the Arizona Intertribal Trust Fund and the Navajo Trust Fund pursuant to section 202.

TITLE II

SEC. 201. CLOSURE OF THE PHOENIX INDIAN HIGH SCHOOL.

(a) CLOSURE.—Notwithstanding any other provision of law, the Secretary shall close the Phoenix Indian High School on a date determined by the Secretary, which date shall be no earlier than June 1, 1988, and no later than September 1, 1988.

(b) NOTICE.—Within 30 days after enactment of this Act, the Secretary shall notify the tribal governing body of each Arizona Tribe affected by the closing of the Phoenix Indian High School and each person, or parent or guardian of each person, enrolled as a student at the Phoenix Indian

High School on January 1, 1988, of the date of closing of the Phoenix Indian High School as determined by the Secretary under subsection (a).

(c) TRANSFER OF JURISDICTION.—Within 60 days after closure of the Phoenix Indian High School under subsection (a), the Secretary shall transfer administrative jurisdiction, management and control of the school property from the Bureau of Indian Affairs to the National Park Service: *Provided,* That, prior to the disposition of the School Property under the terms of the Exchange Agreement or otherwise, the National Park Service shall manage and control such School Property in a manner consistent with the requirements of the Exchange Agreement, including, but not limited to, those provisions governing the removal of fixtures, improvements, and personal property from the School Property. During the interim period of administration the School Property shall not be considered a unit of the National Park System.

SEC. 202. ESTABLISHMENT OF THE ARIZONA INDIAN TRUST FUNDS.

(a) Upon disposal of the School Property and receipt by the United States of the Monetary Proceeds, there shall be established in the Treasury of the United States—

(1) a fund to be known as the Arizona Intertribal Trust Fund; and

(2) a fund to be known as the Navajo Trust Fund.

(b) Each Trust Fund established under this section shall consist of—

(1) an amount equal to the sum of—

(A) that portion of the Monetary Proceeds properly allocable to each such Trust Fund;

(B) that portion of the cash proceeds from the sale by the United States to the City or the Purchaser of additional acres of land within the School Property pursuant to subsection (g)(4) or (m) of section 101 of this Act properly allocable to each such Trust Fund; and

(C) any interest accruing on any amount deposited in each such Trust Fund,

(2) less the amount of Trust Income from the Trust Fund used by the Secretary pursuant to subsection (d).

(c) INVESTMENT.—(1) If a Trust Fund Payment is made in the form of a lump sum payment under section 102(c)(1) of this Act, the Secretary of the Treasury shall invest the amount of such lump sum payment in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162a).

(2) If a Trust Fund Payment is made in the form of annual payments under section 102(c)(2) of this Act, the Sec-

retary of the Treasury shall hold in trust the security provided in accordance with the Trust Fund Payment Agreement.

(3) At the direction of the Secretary, the Secretary of the Treasury may invest in accordance with the requirements of paragraph (1) any portion of the Trust Income not used by the Secretary in any year.

(d) USE OF TRUST INCOME.—(1) Trust Income may be used only for—

(A) supplemental educational and child-welfare programs, activities, and services for the benefit of—

(i) those Arizona Tribes that were members of the Intertribal Council of Arizona on January 1, 1988, in the case of payments from the Arizona Intertribal Trust Fund; and

(ii) the Navajo Tribe, in the case of payments from the Navajo Trust Fund;

(B) the design, construction, improvement, or repair of related facilities; and

(C) the payments referred to in paragraph (3).

(2)(A) To carry out the purposes of paragraph (1), the Secretary, pursuant to appropriations, may make grants—

(i) from the Arizona Intertribal Trust Fund to Arizona tribes that were members of the Intertribal Council of Arizona on January 1, 1988, public school districts on or near reservations of such Tribes in the State of Arizona, and the Intertribal Council of Arizona; and

(ii) from the Navajo Trust Fund to the Navajo Tribe or public school districts on or near the Navajo Reservation in the State of Arizona.

(B) The Secretary shall require, as a condition for making any grant to a public school district, the approval of the governing body of the Arizona Tribe the children of which are to be served by such grant.

(3)(A) An amount equal to 5 percent of the Trust Income during the preceding fiscal year shall be paid annually by the Secretary—

(i) to the Intertribal Council of Arizona from the Arizona Intertribal Trust Fund; and

(ii) to the governing body of the Navajo Tribe from the Navajo Trust Fund.

(B) Payments made under this paragraph shall be used for education, child welfare, community development, and general administrative purposes, and may be made only pursuant to an annual budget adopted by the vote of—

(i) a majority of the members of the Intertribal Council of Arizona, in the case of payments to the Arizona Intertribal Trust Fund; and

(ii) the governing body of the Navajo Tribe, in the case of payments to the Navajo Trust Fund.

(C) The limitation on the amount of payments under this paragraph shall not be construed as a limitation on the authority of the Secretary to make grants to the Intertribal Council of Arizona or the Navajo Tribe under paragraph (2).

(4) None of the Trust Income may be used for scholarship grants for higher education.

(e) ALLOCATION.—In depositing into the Trust Funds the Monetary Proceeds, any payment by the State of Arizona, or the cash proceeds from the sale of land within the School Property—

(1) the amount properly allocable to the Arizona Intertribal Trust Fund shall be 95 percent of the total amount of such payment or cash proceeds to the United States; and

(2) the amount properly allocable to the Navajo Trust Fund shall be 5 percent of the total amount of such payment or cash proceeds to the United States.

Senator DECONCINI. I welcome the people who have traveled here from Arizona. S. 2420 proposes an exchange of land located in Arizona and in Florida. The Arizona land is now being used for the Phoenix Indian School in downtown Phoenix; the Florida lands are located in the Everglades of Florida.

Considerable attention has been focused on the different aspects of this unique proposal. Many questions have been raised about the best way to meet the educational needs of the Indian children of Arizona. In the minds of the Indian people, the Phoenix Indian School is still needed to educate their children.

The BIA says there are enough schools located on or near Indian reservations, and that the school is no longer needed and the BIA has, for a number of years, taken that position.

People wonder about the significance of the Florida land. If we were to proceed with the exchange, how do we make sure that methods used to determine land values reflect what the open market would produce?

There are other concerns which will be presented today. Under the leadership of the distinguished chairman of the Interior Committee, Congressman Udall, the entire Arizona delegation in the House has grappled with this for some time and tried to meet all of these concerns. Under great scrutiny they have fine-tuned the bill for some period of time; for example, S. 2420 as it now reads reflects what the House started out with as its original proposal. Since the beginning of May that proposal has been changed in a number of significant ways. The length of time allowed to third-party purchasers to make an offer to the Government has been increased by 60 days. BIA will be required to develop individual education plans for the students affected by the closure of the Phoenix Indian School. The Comptroller General will evaluate the zoning proposed for the Arizona land and the process used in determining the value received by the United States as a result of the zoning and the planning.

There are other aspects to be proposed in this exchange which address the other needs which now exist in the State of Arizona. If we are to close the school and proceed with the exchange, then this Senator—and I think the entire delegation—thinks the top priority has to be given to a number of things.

We should first give priority to seeing that all the cash proceeds go into a trust fund for the education needs of the Indian children. Then, there is the need of the Veterans Administration for an additional 16 acres for the expansion of their medical center and a State home for veterans. And finally, the city of Phoenix is in dire need of a park in the downtown section which will be used by all citizens, with a reversion clause granted therein.

Mayor Goddard regrets that he could not be here today, but he has sent a statement which will, without objection, appear in the record.

[Prepared statement of Mayor Goddard appears in appendix.]

Senator DECONCINI. I do want to summarize quickly the points that the city of Phoenix wants to be sure are stressed.

First, a minimum of 20 acres of open space provided to the city, at no cost.

Second, that the developer be part of a joint planning process with the city to develop a specific plan for the Indian School property and provide a purchase option to the city for individual parcels.

Third, to maximize the efficiency of the plan, the Veterans Administration should participate in the joint planning process.

Fourth, the city has the first option to purchase, at recreational value, land not accepted by the Veterans Administration and/or the State of Arizona.

The city agreed to commit itself to a planning and zoning process which would be applied here. The city has demonstrated a strong interest in assuring the integrity of the planning and zoning process, and I commend Mayor Goddard and the City Council for their long, long work.

At this time I want to enter into the record a statement by the Senator from Arkansas, Senator Bumpers. It will appear in the record as if read.

[Prepared statement of Senator Bumpers appears in appendix.]

Senator DeConcini. I yield to the distinguished junior colleague, Senator McCain, who has played a major role in organizing and putting this effort together so that we could be here today for a hearing. Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCain. Thank you, Mr. Chairman. I would like to express my appreciation to you for the leadership that you have exerted on this issue for a long time. You have exercised the voice of caution, which I think has led to some of the changes that we have seen implemented which, in my view, has made this a better piece of legislation.

I would also like to express my appreciation to our revered leader, Morris Udall, without whom I do not think we would be at the juncture that we are at today; and to my friend, Jay Rhodes, who has involved himself heavily in all Indian issues in our State and who has played a key leadership role in addressing this very difficult issue.

I think it's well to point out that our colleague, Bob Graham, a former governor, was in on this issue at its inception back in 1983 when he became heavily involved in our Save Our Everglades program and identified the need for public acquisition of the Collier properties as essential to the protection of the Everglades ecosystem. Bob, we are not only pleased to have you here today, but I think that the environmental community nationally is very grateful to you for your—now—5-year-long effort to save the Everglades, which is clearly an important aspect of this piece of legislation we are discussing today, which to some extent has been lost on occasion because of all of the controversy surrounding the Phoenix Indian School.

Mr. Chairman, I'd like to have my full statement made a part of the record with your permission, and just make a couple of points.

Senator DeConcini. Without objection.

Senator McCain. There is $34.5 million in this piece of legislation for the education for Indian children. These moneys are not meant to replace present funding for Indian education in Arizona; it is a supplement to Indian education in Arizona, and I would suggest to you that it is very, very badly needed. A visit to any of our educational facilities on Indian reservations in Arizona clearly indicates that we need additional funds which, sad to say, do not appear to be forthcoming from the Federal Government, given the constraints with which we are all familiar.

Second of all, our veterans do need additional property as the veteran population in Arizona continues to grow; not only in numbers, but our aging veteran population continues to require more and more services.

I think it is also clear, according to the city of Phoenix, that we need recreational facilities, and this 20 acres for a park will be a very important addition to the ability of the citizens of our valley to have adequate—indeed, exceptional—recreational facilities.

One of the major questions that is going to be addressed today is the issue of fair land value. I think Congressman Udall will address this issue, as well as other witnesses. No one wanted to close the Phoenix Indian School. We all recognize that there is a requirement not only for existing, but also for additional Indian educational facilities. That part of the issue, I think, has been overtaken by events. In my view, our challenge now is to try to make the best of a situation that exists, paying key and crucial attention to the issue of Indian education to which I know this committee and the Arizona delegation are committed.

Thank you, Mr. Chairman, and I look forward to hearing all of the witnesses today. I hope that those who are opposed to this legislation know that we have held this hearing particularly for them and that we will certainly consider their views, inputs, and recommendations as we finalize this legislation.

Thank you, Mr. Chairman.

[Prepared statement of Senator McCain appears in appendix.]

Senator DeConcini. Senator McCain, thank you very much. I echo your comments as to Senator Bob Graham of Florida and his leadership as the governor there, being a long-time advocate of Everglades expansion. We're glad to have you here, Senator Graham, and you may proceed with any statement you have.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM FLORIDA

Senator Graham. Thank you, Mr. Chairman, and to your colleague, Senator McCain. I have a full statement which I would like to submit for the record——

Senator DeConcini. Without objection, it will appear in the record as if read in full.

Senator Graham. I would like to make some more informal remarks on the Florida aspects of this exchange, and I would state that my remarks are limited to that component of this exchange. I do not profess to have the kind of knowledge that the other representatives who are here today will provide on the Arizona side, as well as you and Senator McCain.

Everglades National Park is an international treasure. It is one of the eight biospheres selected by the United Nations as illustrative of the best environmental systems on the planet. It is the second largest national park in the continental United States. So when we speak of this, we are speaking of a piece of our world's treasure, over which we have a special trusteeship.

Everglades National Park shares with few other of our national parks the fact that it is primarily influenced by, and its unique characteristics are a function of, activities that take place outside the park: in this case, the flow of water, the volume, the hydro period, even the week-to-week variations are important elements of the character of Everglades National Park.

The original boundaries of the park, which were drawn in 1947 and which largely represented land donated to the National Park System by the State of Florida, were not drawn with some of the hydrologic understanding that we currently have. It has become increasingly apparent that a buffer zone needs to be established around the original borders of the park in order to give greater protection to those external influences, specifically the flow of water. So, beginning in the 1970's with the acquisition of the Big Cypress Preserve and accelerating in 1983 with a buffer zone plan which was developed between the U.S. Department of the Interior and the State of Florida, an effort has been underway to acquire the key components of land outside the park necessary for the protection of the park.

This particular piece of land that we are discussing today has already been recognized in its importance by the passage, by both the House and the Senate and the signature of the President, of S. 90, which was the Big Cypress addition. It is approximately 130,000 acres, immediately north of the Big Cypress Preserve. Not only is a key part of the water flow into Everglades National Park, it also represents one of the significant areas for the Florida panther, an endangered species which utilizes this area as a primary refuge.

This exchange offers an opportunity to acquire the Big Cypress addition through a partnership with the State of Florida. The State of Florida has provided approximately 20 percent of the funds which have been used to purchase the lands around Everglades National Park, including $40 million toward the Big Cypress Preserve itself. The State had made a commitment to provide 20 percent of the funds for the acquisition of this Big Cypress addition.

The proposal now is for the Federal Government to meet its portion of that partnership through the exchange, and for the State to use funds which it has already earmarked for this purpose to purchase the lands that are not included in the exchange.

We have had two particular concerns about the Florida aspect of this acquisition. One was the standards for oil and gas exploration in the Big Cypress addition. The proposal for this exchange is that the current owners will continue to hold the mineral rights, as they hold the mineral rights in the Big Cypress Preserve itself. The current language would result in the same standards for permitting for oil and gas exploration in the Big Cypress addition as are currently in place in the Big Cypress Preserve. I can state that those standards in the Big Cypress Preserve have been acceptable in terms of balancing the environmental sensitivity of this area with the mineral rights of the owners.

The second question has been land value. Most of this property, at least in dollar value, has been subjected to intensive appraisals by the Federal Highway Administration and the Florida Department of Transportation because it is in the corridor of the current Alligator Alley, a State toll facility which connects the east and west coasts of southern Florida, and which will now be the corridor of I-75, an Interstate connecting east and west Florida.

When the Interstate was determined to use that corridor, it was recognized that there would have to be severance values paid to the adjacent landowners who now have free access to drive their vehicles on and off Alligator Alley, and will be restricted as an Interstate. So values have been determined for purposes of assessing what those severance damages would be. I asked the Florida Department of Natural Resources, which has had extensive experience in evaluating environmentally-sensitive lands throughout the State and particularly in the area of the Big Cypress addition because of the extensive work that they have done in areas such as Frakahatchee Strand, which is located just to the west of the bulk of this property—the Department of Natural Resources reviewed the appraisal processes and the values which have been used for this exchange, and they have concluded that the values are at or below what they consider to be the appropriate market value.

So those two principal questions relative to the Florida side of the acquisition have been resolved to my satisfaction and, I believe, to the satisfaction of most if not all of the Florida delegation.

Mr. Chairman, this exchange offers the unique opportunity to complete the acquisition of the Big Cypress addition, to provide the Federal share of an important continuing State-Federal partnership, and also to acquire additional lands on the western side of Everglades National Park, represented by the red area that is essentially in a north-south alignment, and lands in the Ten Thousand Islands, another environmental jewel of south Florida which this will facilitate bringing into public ownership.

I strongly urge this committee's favorable attention to this exchange in terms of what it will mean for the protection of one of our Nation's treasures, the Florida Everglades.

[Prepared statement of Senator Graham appear in appendix.]

Senator DeConcini. Senator Graham, thank you very much for that explanation and that little bit of history. That is very helpful to us.

Chairman Udall, we are very privileged and honored to have you with us here today as someone who has already worked this bill almost to the House floor. We welcome you here today. Any full statement you have we will put in the record, and you may proceed as you like.

STATEMENT OF HON. MORRIS K. UDALL, U.S. REPRESENTATIVE FROM ARIZONA

Mr. Udall. Thank you, Mr. Chairman. We are scheduled as "pending business" in the other legislative body here on the Hill on Wednesday, the day after tomorrow, and we hope to get you a bill that has the virtues that Senator Graham has talked about and that meets all of the charges that have been made against us.

We are in a time when we are all concerned about budget problems, and I think that the Interior Department, which produced this bill—this idea of a trade or a swap—originally is to be commended for the innovative way in which they have put this together. The Arizona delegation, with your participation and that of Congressman Rhodes and the others, have really done a good job. I appreciate the support they've given me in trying to put together a bill, a program, which will save a key feature, a real gem of the American ecosystem, by providing the buffer facilities that need to be done.

I'd been active in the problems of the Everglades long before I ever heard of this exchange bill. This is national legislation. This shouldn't be looked at as a little "sweetheart deal" between Arizona and Florida to get some money out of Uncle Sam. If for nothing else, this ought to be passed to make sure that the Everglades, one of the real treasures of our diverse park system, can be saved.

Just a little history; this goes back 100 years. We had treated our Indians with less than the respect that they deserved, and one of the theories on which we operated was that Indians were inferior; that they had to learn the white man's ways, and they weren't going to learn them sitting out on some reservation. We had to get them in school. They tell a story in northern Arizona that I heard once of a Hopi lady who wrote a book on this subject; she remembered her years of hiding in the corn fields because these men were coming to put her on a train and send her off to Oklahoma, maybe to come back at Christmas time.

Attitudes changed over the years. While you can't put all Indians in the same box, there was a feeling of ethnic pride that developed, with the Indians saying, "We don't want our children exposed to all of the modern world. We want high schools that will take care of them here at home." Over the last 20 years we have built high schools on the Indian reservations, two or three of them on the Papago alone in the area that I represent.

The philosophy—it's not for me to quarrel with the philosophy, but the philosophy of the majority of Indian parents today I think is, "Let's have the Indian schools on the reservation." When the movement in this direction came along, it was obvious that some schools were going to have to close down. One of the major schools that had educated a whole generation of our Indian friends was essentially surplus. The western tribes were served by a school in Phoenix and by a school in Riverside, and the Indian Service, with all the new high schools coming on line, said that we couldn't afford—or shouldn't afford—those schools. They ran a pretty thorough investigation and determined that if one were to be closed, Phoenix probably was the one because of the ancient nature of the infrastructure. The water pipes had been there for 100 years, the sewage system hooked up to the city; with all of the other things, their recommendation was that Phoenix be closed and send all the students who otherwise would have gone to Phoenix to Riverside. I am told that it is only 40 or 50 students in this coming year.

So the Interior Department is to be commended for trying to come up with the money, with Uncle Sam trading something else that he's got that's just as good as this land, and that was the genesis of this proposal. The 109 acres of this parcel are not Indian reservation and never have been part of an Indian reservation; it's simply a site that the Federal Government got in order to discharge its function, its trusteeship toward Indian education.

The basic agreement did several things. I will brush over these lightly. It took the 109 acres and said, "Phoenix, you need a park." Phoenix had wanted more park space. I myself would have given much more land to the city for a larger park. Some of the gems of our country are places like New York City's Central Park, the chain of parks in St. Louis along the river, Golden Gate in San Francisco, all of the rest. I would have wanted to make more parks for the people of Phoenix. In fact, former Senator Goldwater said that the city ought to get all of it; it's been there in the city, and the city helped purchase it originally.

But here is the delegation, confronted with everybody wanting to get into the act. The Veterans Administration, which is as aggressive an organization as I've seen moved in. So they first started out with, "Give us 10 or 15 acres more for parking." And as they got going they decided that they didn't just need parking, they needed parking and also more buildings for more clinics.

The veterans' organizations tell us that in the next 10 or 15 years, one-third of all veterans are going to be in Florida, Arizona and Texas, so they had a case for additional land.

The Florida situation has been discussed by the Senator. We are grateful that the Florida delegation has taken the lead on their end and passed the bill, signed this year, to take care of that situation.

The State of Arizona in connection with the Veterans Administration came in and wanted five acres for an Old Soldiers Home; the old soldiers who are homeless are coming more and more to Arizona. They wanted some property adjacent to the hospital for that purpose. We wrote a complicated provision giving the Veterans Administration five acres for eventual transfer to Arizona, for the benefit of the senior citizens who are veterans.

We've had no major opposition from any of the major conservation organizations that I'm aware of. This has been a goal of the conservation community for a long time, as Senator Graham has said. We had to satisfy the concerns of the House Education and Labor Committee; we went into their needs and their concerns about damaging the quality of education in the process of carrying out this trade.

Let me hit the major objections, and then I will conclude.

Our Congressman Sid Yates from Illinois, for reasons that I haven't yet fully understood, has launched an attack on this bill as a "giveaway" that proposes a "sweetheart" arrangement. Ever since Teapot Dome, the Secretary of Interior at that time scared a whole generation or two of people, public officials, about giveaways in land situations like this. And I said to the delegation when we met for the first time about 1 year ago that we should handle this so that nobody could ever come back and say that we hadn't done everything that could possibly be done to get a fair shake for the taxpayers, and I think we've met that responsibility. The first thing we said was, let's review the appraisal. We got that and then we had further informal appraisals from other people involved.

It struck us one day, when we met for about the fourth or fifth time on this, that this is the kind of situation in which you can't have traditional appraisals. You've got all kinds of "Catch-22's." In Phoenix, until you get zoning you don't know what the property is going to be worth, and you don't know until you get zoning what values to put on it. It's not just a situation where you can say, "How can we squeeze the last dollar out of this thing for Uncle Sam?" That last dollar may be high-rises all over this 109 acres. It might be something else, but whatever you pick has some impact on value.

I thought we worked out a constructive program whereby the city of Phoenix is bargaining hard and meeting regularly with the Colliers. They have put together plans for a variety of really tasteful development. The 20 acres for city parks can be blended in with the commercial and residential development, the townhouses, whatever, to make a very attractive area, and you don't know what it's going to be worth until they agree on the blending of this planning process.

But we heard so much complaint about this that we finally put together what we thought was the final answer; that if you want to see bogey men and sweetheart deals, you can go ahead and see them, but I don't think you can successfully challenge that in the face of the ultimate provisions in which we say, "All right, this is a sweetheart deal. Let's go ahead and let Phoenix and the Colliers plan it out and we'll show you what it's going to look like." Then we'll blow the whistle, and you'll have 90 days; y'all come. This is such a valuable piece of property, Congressman Yates and others tell us, that these hotshots that put together these mergers and acquisitions on junk bonds or whatever will be standing in line to reap the bonanza; all of the Colliers' three or four years of work and negotiation goes down the drain, as does the work done by the Arizona delegation.

And we say, come in; if your offer is better, take it. You will succeed the Colliers in their situation; welcome. I don't know how else you can involve the market forces in an unusual situation where the zoning may determine what it's worth, and what it's worth may depend on zoning. Let's get it out in the open and have a bidding process. We provide for that in the legislation.

Mr. Chairman, you've got other witnesses. I feel very strongly about this legislation. It's good for the country; it's good for conservation; it's good for Phoenix; it's really good for everybody, but you don't find the enthusiasm content that you would hope to find. The veterans think that they should have more, and keep nosing around. I have inquiries from time to time, and I wouldn't agree that another five acres would be good for the veterans. Phoenix thought they were cheated out of their birthright; as I said, Senator Goldwater—who is a veteran of the city council, incidentally—wanted to get the whole thing. So it goes.

We think we've come here with a good bill. It resolves a lot of problems. It's actually good for everybody, but not as good as everybody would want it to be in every instance.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Udall appears in appendix.]

Senator DeConcini. Chairman Udall, thank you very much for that background explanation. It's extremely helpful to the committee.

Congressman Rhodes, we're glad to have you here. You've certainly taken a leadership role, serving on the Interior Committee, and we'd welcome any remarks you may have.

STATEMENT OF HON. JOHN J. RHODES III, U.S. REPRESENTATIVE FROM ARIZONA

Mr. Rhodes. Thank you, Mr. Chairman. I ask unanimous consent that my statement be included in the record.

Senator DeConcini. Without objection, so ordered.

Mr. Rhodes. I will just briefly add to the comments that Chairman Udall has made.

In the Chairman's closing he indicated that the veterans believe that they should get some more land out of this; the city of Phoenix definitely thinks that it should get some more land. I understand that there are some national environmental groups who think that we are not getting enough addition to the Big Cypress out of it, that we could get more. The Indians do believe that we have reduced the trust fund unreasonably, that there is not enough money in the trust fund. Nobody is completely happy with this, so it's got to be a good bill.

The thing I want to emphasize are the remarks that the Chairman made concerning the great effort that we've made to try to be sure that the taxpayers of the United States get full value out of this Indian School property. I know of no better way to determine what a piece of property is worth than to put it on the market. I haven't heard anybody come forward and say that there is a better way, that they know how to value this property other than by putting it on the market. We certainly are not in a position to determine what the value of the property is; the city of Phoenix is certainly not in a position to do so; the Colliers are not in a position to do so because, as Mr. Udall has pointed out, the city of Phoenix has not been presented with a proposed development plan and therefore has not reacted to one, and therefore has not said what they will permit on this property. The property is included in the Phoenix General Plan as fairly low-density residential property. If it were to be developed according to the Phoenix General Plan, I doubt seriously that it is worth the value that we've placed on it in this legislation.

I think that among the Arizona delegation and the four committees of jurisdiction in the House—Interior Committee, Veterans' Affairs Committee, Education and Labor, and Merchant Marine and Fisheries—we've crafted a piece of legislation that accomplishes the goals that we set out to meet, which are to acquire this property in Florida, which is very valuable from an environmental standpoint; to provide a development opportunity in downtown Phoenix which is compatible with the long-range plans of the administration of the city of Phoenix; to provide some open space for the city of Phoenix; to provide a reasonable space for expansion of the Veterans' Hospital and development of a State retirement home for veterans; and to provide a trust fund to meet the special educational needs of Arizona Indian children.

I wholeheartedly support this legislation and will be working with the Chairman on Wednesday to shepherd it through to the floor of the House of Representatives, and certainly that the two of you, who have worked as hard as—if not harder than—any other members of the delegation to get us to where we are today, that you can assist us over here, and that before the end of the 100th Congress we will have a piece of legislation which we can present to the President and wholeheartedly urge him to sign it so that we can proceed with this project that we've all been working on for so long.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Rhodes appears in appendix.]

Senator DECONCINI. Thank you, Representative Rhodes.

I have no questions of the panel. Senator McCain.

Senator MCCAIN. Just one question, Mr. Chairman.

I think the issue has been very well covered by all of the witnesses.

Senator Graham, one of the concerns that was raised in one of the local newspapers is that some of the Florida lands are under water, and therefore worthless. Would you address this question please?

Senator GRAHAM. There are lands which are in this change which have not had a value placed upon them, which indicates that as far as this exchange is concerned, if they are not worthless, no compensation in terms of Arizona exchange lands being asked—as I indicated in my statement, I asked the Florida Department of Natural Resources, which I consider to be the best source in terms of their experience in appraising lands with the unique characteristics of much of the land in this exchange, and their conclusion was that the value which has been placed on these lands is at or below what they consider to be market value.

Senator MCCAIN. Including the fact that lands that are under water are not necessarily worthless, if we're talking about the Everglades.

Senator GRAHAM. Where they have no market value, they have not been assigned a market value for this exchange. But to bring those lands into public ownership so that they can be permanently protected, and so that their uses will not be detrimental in this case to the functioning of Everglades National Park, is a public factor.

Mr. UDALL. This view is really unfortunate: "What the hell is it? It's just a swamp." The swamp is the prompter out of which life emerged on this planet. To say that this is some kind of worthless property, the whole function of the Everglades and Big Cypress is to provide the water for the annual flow down to the south and west, out of which the Everglades stay alive. It's like saying, "The Grand Canyon is just a big ditch, a hole in the ground, no value." [Laughter.]

Swamps are critical, and we've got one of the best swamps in the world. It ought to be preserved.

Senator MCCAIN. I might add to that, Mr. Chairman, it seems to me that when I was a member of your committee we devoted a great deal of time and money to appropriations and authorizations for preservation of wetlands which are under water, as well, but which are environmentally crucial for a variety of reasons.

Thank you, Mr. Chairman.

Senator **DeConcini**. Thank you.

Thank you very much, gentlemen, for your testimony. It has been very, very helpful.

We will now call the next panel: The Honorable Susan Recce, Assistant Secretary for Fish and Wildlife and Parks, Interior Department. She will be accompanied, I think, by Mr. William Ragsdale, Deputy Assistant.

Ms. Recce, if there is anyone else you care to introduce, please proceed. We're going to ask that you summarize your statement; we spent a little bit more time on that first panel than I had anticipated. Your full statements will appear in the record, and if you would summarize for us, please.

STATEMENT OF HON. SUSAN RECCE, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WILLIAM P. RAGSDALE, DEPUTY ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS; WILLIS P. KRIZ, CHIEF, LAND RESOURCES DIVISION, NATIONAL PARK SERVICE; WILSON L. BABBY, DIRECTOR OF EDUCATION, BUREAU OF INDIAN AFFAIRS; AND WILLIAM HARTWIG, CHIEF, DIVISION OF REALTY, U.S. FISH AND WILDLIFE SERVICE

Ms. **Recce**. Thank you, Mr. Chairman. I would like to introduce to you, on my left, Mr. Ragsdale, who is the Deputy Assistant Secretary for Indian Affairs, who will lead off on our presentation this afternoon.

To his left is Mr. Kriz, who is Chief, Land Resources Division of the National Park Service.

To my right is Mr. Hartwig, who is Chief of Realty for the Fish and Wildlife Service.

Let me first have Mr. Ragsdale speak for us.

Mr. **Ragsdale**. Thank you, Mr. Chairman. I am pleased to have the opportunity to be here to discuss S. 2420. With me is Mr. Wilson Babby, who is sitting to my left, just behind me, who is our Director of Education with the Bureau of Indian Affairs.

We believe the Phoenix Indian School should be closed due to declining enrollment. In the event of closure, school children eligible for off-reservation boarding school enrollment could be placed at Sherman Indian High School, located in Riverside, California. The Sherman facility is more than adequate for these students. However, since it is not likely that Congress will enact legislation until after August 12, we would recommend that the bill be amended to allow us to continue to operate the school for one more year. This would enable us to avoid the disruption which would occur if we closed after opening. It would also be in the best interests of the students and staff, as well as the interests of the Bureau, to provide education continuity for the Phoenix Indian students. Currently, we have only about 50 students, more or less, who may be placed at Phoenix. We have staff resources numbering about 51, which will enable us to operate the school for the rest of the year if Congress cannot enact legislation before August 12.

The staff resources would allow us to handle the number currently planning to attend, or a number of students up to about 175.

Thank you. We are prepared to answer any questions that the committee may have.

[Prepared statement of Mr. Ragsdale appears in appendix.]

Ms. RECCE. I will followup on his statement by saying that during or even prior to the actions that resulted in the decision to close the Phoenix Indian School and to schedule the property for disposal, there were two separate events taking place in Florida. One of these was Florida's decision to convert the road through the northern Everglades' Big Cypress area, known as Alligator Alley, into the final link of Interstate 75. The second event was a major effort beginning at that time to protect the remaining elements of the Everglades-Big Cypress ecosystem, known as Save Our Everglades.

At one time the school, the Interstate highway, and the Save Our Everglades campaign were proceeding on their own separate courses, and I will explain why they were linked together in this land exchange.

A look at the map will show you that a major tract of land in Big Cypress is blocked in by the existing preserve and two Indian reservations. The conversion of Alligator Alley to Interstate 75 will require the payment of severance damages on these lands because access to the land from Alligator Alley will be lost once the road is converted to a limited access Interstate highway. The severance damages will total about half the value of the entire tract of land; yet, this payment of severance damages gives the Government no interest in the land. However, if the land was purchased in conjunction with the severance payments, the acquisition agencies would only have to pay half the cost since the Highway Trust Fund would have to pay the severance damages in any case. In other words, our acquisition will cost the value of the land minus the cost of the severance damages.

Then Governor—now Senator—Graham of Florida recognized this opportunity and initiated the acquisition proposal. Seeking support, he met with departmental officials and Members of Congress. Details were discussed over several years, but the current budget climate simply did not permit us to support purchasing the land, despite its environmental importance. But because a majority of the land is owned by only two corporations, representing the Collier family, we decided to pursue the possibility of acquiring their lands through an exchange rather than purchasing them with appropriated dollars. The land exchange would allow both highway construction and conservation lands protection to move forward together, and also save the Federal Government from compensating the landowners twice. If this approach proved successful, we would propose that the State of Florida assume responsibility for acquiring the remaining lands in the tract.

The Colliers were then asked to look around the country for Federal property that they would be interested in acquiring through an exchange and, by coincidence, during that period of time Congressional action relating to the closure of the Phoenix Indian

School, as discussed by Mr. Ragsdale, brought to our attention the possible availability of this property for the exchange. Once the Bureau of Indian Affairs study recommended closure of the Phoenix Indian School, we secured agreement within the Department to offer the school land for exchange, and the Collier family expressed an interest in it. After several years of work, mostly involving the use of the Phoenix land, we succeeded.

The Phoenix land will be zoned in a public process. Any interested party can be fully informed at all times. At the completion of the zoning process, the land will be offered to the highest bidder. This will protect the interests of the United States in the land in the event that the zoning process raises its value over our present appraisals.

Because the objective of the exchange is to acquire the Collier lands in Florida, Collier will have an opportunity to match any bid that may exceed our appraised value. If Collier elects not to match the higher bid, the United States will use the amount received from the sale of the property to purchase the Florida land. These wetlands in Florida are unique and irreplaceable. They face real development threats, and the proposed exchange would provide the necessary protection. The land is essential habitat for the highly endangered Florida panther and other endangered species. Much of the land provides water for the Everglades National Park.

This regional watershed is the source of drinking water for millions of people in south Florida. The thin rock cap on the local aquifer is only one to two feet under the surface, and therefore the water is easily polluted. Existing laws cannot prevent conversion of this land to agricultural and residential uses. Planting citrus groves and other agricultural development do not necessarily require Federal permits. The building of individual recreational homes or camps on stilts or high ground is also not subject to Federal permits. Unregulated off-road vehicle use on the land can also alter water flows.

If the land is subdivided and sold, such use and construction of dwellings will increase significantly. The real threats are pesticides and other pollutants, destruction of water flows, and human disturbance of endangered species—not high-rises and shopping malls.

If the exchange is not approved by Congress, the land proposed for addition to the Big Cypress Preserve is authorized to be acquired by purchase. This would be a very unsatisfactory outcome. The present owners cannot maintain this land in an unproductive state for any length of time. Any effort to acquire this property through the appropriations process will take many years. Significant portions of the land will be converted to agriculture or subdivided before they can be purchased. This would seriously impact the resources that we have there. Such a piecemeal acquisition effort would not only fail to protect the resource adequately; it would cost far more than acquiring in a block, as we propose.

Mr. Chairman, Congress has already determined that most of this land is to be acquired for the reasons I have listed. The only question is whether we can do so in a cost-effective and useful fashion. Our proposal provides protection to the Florida lands immediately, before it can be developed or polluted, and protects the public interest in the Phoenix property value by offering it to the highest bidder after it is zoned for development.

We commend your prompt consideration of the exchange and urge enactment of the legislation this year.

Mr. Chairman, this concludes my remarks.

[Prepared statement of Ms. Recce appears in appendix.]

Senator DeConcini. Thank you very much.

Mr. Ragsdale, let me ask you about the funds to operate the school. Do you have those funds if the bill is changed?

Mr. Ragsdale. Yes, sir.

Senator DeConcini. You anticipate having them without any problem?

Mr. Ragsdale. Yes, sir.

Senator DeConcini. How much does it cost to run that school with the present enrollment?

Mr. Ragsdale. We would anticipate that it would cost us between $1.3 million and $1.8 million, depending on the exact enrollment. The base level of funding for maintenance and for having enough staff to provide a core curriculum for grades 9 through 12 would cost us approximately $1.3 million.

Senator DeConcini. And that's providing the housing there for them?

Mr. Ragsdale. Yes, sir.

Senator DeConcini. Now, a lot of the Indians that we have talked to in Arizona say that one of the reasons that the enrollment has declined is not only that there have been schools opened on the reservations, but in fact BIA has not taken care of the school. It looks like it has not been taken care of, but in fairness it is very old. On my last visit there several years ago it certainly was in bad shape, and that was before this was on the agenda or on the table.

Now, there is a board of directors—a school board. Tell me a little bit about that board. Who appoints them? Are they independent? Just exactly what is their responsibility?

Mr. Ragsdale. I'll let Mr. Babby talk about the constitution of the board, but let me say that I would agree with the Senator that the school is in need of major repair and renovation. We must keep in mind that the idea that the school would probably close has been discussed since 1984. We are currently spending upwards of $800,000 annually, as I understand it, to operate and maintain the school until a determination is made as to whether or not we will close.

Mr. Babby.

Mr. Babby. Senator, the board consists of representatives of various tribes that the students represent on the student body.

Senator DeConcini. How many are on the board?

Mr. Babby. I'm not sure offhand. With the tribes that are there, it would be approximately seven to nine.

Senator DeConcini. Do they serve a term?

Mr. Babby. They serve in an advisory capacity.

Senator DeConcini. Advisory only?

Mr. Babby. Advisory only.

Senator DeConcini. Do they serve a term of office?

Mr. Babby. Yes; they do.

Senator DeConcini. And who appoints them?

Mr. Babby. They are representatives of their tribes. The tribe elects them or appoints them to be on the board.

Senator DeConcini. They sit for a period of time? The Secretary does not appoint them?

Mr. Babby. Yes.

Senator DeConcini. And they are only advisory?

Mr. Babby. Yes, sir.

Senator DeConcini. Are they paid?

Mr. Babby. No, sir; their expenses to the board meetings are paid.

Senator DeConcini. It has always amazed me that the opposition to closing this school has not been from the board. It has been from the ITC and other activists, education activists, from the various tribes. I just wonder why this board is not more active. But if you don't know how many members there are to it, then apparently it's not a very important board.

Mr. Babby. Well, what I could say is that any board would support their own school. They would want to maintain it and keep it open.

Senator DeConcini. Ms. Recce, one of the things that has concerned us is that based on the GAO evaluation of the appraisal of the property there—is it your best judgment that this is a fair market value placed on that property as of the time of this bill?

Ms. Recce. Yes, sir.

Senator DeConcini. And what brings you to that conclusion?

Ms. Recce. Well, I'll have Mr. Hartwig go into detail, but we conducted two appraisals. I think the second appraisal better reflects the future for that property in a mix of high-density, medium-density, and low-density development. It was conducted with standard appraisal methods.

As I mentioned in my remarks, we do have a built-in safety valve; until after the city has had the opportunity to engage in the development and zoning process, we would not really know what that property may look like for development. Of course, at that point there would be an opportunity for value to be set from the outside if it's other than what our appraised value is. I look at our appraised value as a "floor." It may still be that value at the end of this process; or after the bidding process, it may be higher.

Senator DeConcini. I think that Congressman Udall pointed out that the bill provides for 90 days for anybody to come and offer to meet the then-value of the property. Is that your understanding?

Ms. Recce. Yes, sir.

Senator DeConcini. And is it your view that 90 days is sufficient time to give to entities that have not been involved in the process, to assess it and make a bid if they so want to?

Ms. Recce. Yes, sir, by the fact that in the next few years, as the parties involved will engage in the planning and zoning process in a public forum. I think the process will give plenty of opportunity for those who are interested to become aware of it and to follow that process. We also plan to have a notice in the Federal Register to alert the public to the times and the procedure for bidding—I believe it's a 45-day notice to the public.

Senator DeConcini. Thank you.

My last question deals ~~with the~~ appraisal process. A Mr. Lee was asked to do some appraisals, and in the course of his assessment of the land exchange, "new appraisals of Interior's Collier proposal would not resolve issues," according to this instrument that I'm reading from, the report to the Chairman, Committee on Interior and Insular Affairs of May, 1988. I don't want to go out of context, but I don't know how else to go through it. It's a lengthy report. But I just want to read this to you and have you respond.

"The appraiser who performed this appraisal told us"—this is the GAO saying this—"that he had assumed that about eight acres, located in the more valuable portion of the land, would have to be dedicated to the city for a park, and that whatever private sector entity acquired the property would have to negotiate with the Veterans Administration, which wants to acquire a portion of the site."

And then it goes on, "When we asked Lee"—who is the appraiser—"if he agreed with Interior's proration, he informed us by letter that 'Essentially, the modification of these two major assumptions totally invalidates the appraisal report prepared under my signature and dated March 24, 1987. I can state unequivocally that any manipulation of or allocation of the value estimate contained in our original report on a price per square foot or, more ridiculously, on a price per acre basis, would be ludicrous. You are violating the appraisal principle of contribution.' "

Can anybody clear for the record or refute what Mr. Lee has to say in that report?

Mr. Hartwig. Mr. Chairman, the Fish and Wildlife Service took the view, after reviewing two separate appraisals and doing an independent third review of the two appraisals by our Chief Appraiser, that with the ever-changing manifestations of this deal as it came through the separate phases of increase and decrease of land, from one individual interest to another, as far as the city, the VA, and the State were concerned, that the best way to look at it was to look at a cost per acre. We felt that there was enough evidence in both appraisals to support that aspect of an approach, and felt very comfortable with that. It is a negotiating technique that we have used elsewhere in several situations.

Senator DeConcini. You are satisfied, I take it, and Ms. Recce is likewise, that you could stand here before Congress as part of your public responsibility and as a trustee for Native Americans and say that in your best judgment this is indeed a fair market value based on today's appraisal of that land?

Mr. Hartwig. Absolutely, it was a fair market value at the time that the appraisal was done. We feel that with the legislation that is pending, and the ability to make further adjustments at the time that the zoning is completed—we feel there is absolutely no possibility of having a shortcoming to the Government or to the general public.

Senator DeConcini. My last question, Mr. Ragsdale, you said you have funds and you want authority to run the school for another year. What if this process of zoning and planning takes more than a year, which it might, so the closing of the school, where the funds being transferred over for Indian education has not taken place yet—would you perhaps anticipate having the school open for more than a year in the event that closing had not taken place?

Mr. **Ragsdale**. Well, again, we are hopeful that Congress would enact legislation to close the school during the course of the year, but we would have to make an assessment of our situation probably at the first of the year to determine whether we were going to be required to operate Phoenix Indian School after this year.

Senator **DeConcini**. My concern for asking the question is that—of course, I've been opposed to closing the school; that's why it's in the appropriations bill, and a lot of other people have, too—but we can see that if this legislation passes, it's obviously going to close. But it seems to me that before we shut the door we ought to be sure that this agreement is in place so that the trust funds are there, so at least we can say that we have replaced the school with something that is going to do something for education.

Based on that, would you have any contingency plans to keep that school open until the trust funds were available under this proposed legislation?

Mr. **Ragsdale**. Well, whether trust funds were made available would depend upon——

Senator **DeConcini**. I'm talking about the trust funds under this legislation.

Mr. **Ragsdale**. Yes, sir. It would depend upon the viability of this bill or a similar bill. If it appeared in all likelihood that we were going to pursue that concept, that it was going to be approved, then we would perhaps consider some other contingencies.

Senator **DeConcini**. Ms. Recce, do you have any problems with this legislation as to the transfer of part of this land to the city of Phoenix for a park, with no cost, and some 16 acres to the Veterans Administration for the expansion of the Veterans Hospital and an Arizona veterans' home?

Ms. **Recce**. No, sir, I don't.

Senator **DeConcini**. Okay. Thank you.

Senator McCain?

Senator **McCain**. Thank you, Mr. Chairman. I think you've asked all the appropriate questions here. I would like to make two comments, one to Mr. Ragsdale and one to Ms. Recce.

Mr. Ragsdale, I appreciate your depiction of why we are where we are as far as the closure of the Indian School is concerned. Some of us have a somewhat different view in that for all intents and purposes, the Phoenix Indian School was starved budgetarily. The staff was reduced at the Phoenix Indian School. The operations and maintenance funds were reduced, which almost led to the inevitability of its closure.

You're free to respond to that, but I kept very close track of what took place. I don't think there was an attempt on the part of the Bureau of Indian Affairs to maintain Phoenix Indian School in the kind of condition which does credit or is adequate to Indian education.

Ms. Recce, I am disappointed that you should take the position, speaking for the Administration, that you strongly object to $34.9 million for a trust fund for Indian education. In it you say that you believe "that the needs of the Arizona Indian community have already been met in large part by the expenditure of over $40 million in Federal funds to construct new on-reservation high schools in Arizona, and any additional needs should be met," etc.

Ms. Recce, if that trust fund was $300 million we wouldn't have enough money to provide for Indian educational requirements in Arizona. I think it shows some ignorance of the conditions under which Indian people are being educated. I would be pleased to take you to Fort Defiance and show you a facility that you wouldn't send your children to, and other Indian educational facilities which are not only substandard but are totally unsatisfactory.

I would hope that we would seize the opportunity to have an additional $40 million that we could devote to Indian educational needs because, in my view, it's a drop in the bucket as to what is needed in addition to owning up to the obligation that we have, and indeed the commitments that we've made, to Indians all over this country when we guaranteed them certain benefits, one of them being a proper education. We not only owe them, but we owe all of our citizens. But it is sadly lacking in comparison with our non-Indian communities in our States.

I hope that you also understand that I don't believe that this legislation would have received the support that it has if we had not earmarked these funds for Indian education.

Please respond, you or Mr. Ragsdale, if you would like.

Mr. **Ragsdale**. May I respond first, Senator?

I wouldn't disagree with regard to the care of the facility. I would not disagree with your characterization that the Phoenix Indian School is in need of major repair; in fact, I do agree with that. But the point that I would like to make is that until a determination is made that is somewhat longer in nature than a year, it does not make sense for us to request major facility improvement and repair funds and invest several million dollars more in the facility if the process of closure of the school is imminent within the next year or so.

Senator **McCain**. Thank you.

Ms. Recce, do you care to respond, please?

Ms. **Recce**. Yes. The whole subject of the trust fund, as you know, was a part of the contract negotiations. We were a part of that process. However, this land exchange doesn't just relate to the National Park Service and its goals. It is something that falls under the scrutiny of the entire Administration which has a general policy of opposing earmarked funds, believing that, properly, funds should be subject to the appropriations process by Congress so that the school is considered along with other Federal programs which compete for scarce dollars as well.

So even though this was once contained in our negotiated agreement, the general Administration policy superseded that.

Senator **McCain**. Well, thank you. I understand what general policies are and I don't want to belabor the issue, but the Phoenix Indian School was a unique institution, not only in Arizona but throughout the southwest. There is a special connection there and a special requirement which we feel that we can at least go some distance in fulfilling, and that is to provide moneys for a supplemental Indian educational trust fund as a result of the closure of this property.

Thank you very much.

Senator DeConcini. Thank you, Senator McCain.

Let me ask one last question, Ms. Recce. Can you give us a statement today, or will you provide us with a statement—if this bill passes, in essence, intact with the trust fund, what will be the recommendation of the Department to the White House regarding signing the bill?

Ms. Recce. I would have to defer and provide that answer later.

Senator DeConcini. Would you provide that for us, please?

Ms. Recce. I sure will

Senator DeConcini. Thank you very much.

[Information to be supplied follows:]

The recommendation of the Secretary to the President is unknown and cannot be conveyed at this time.

Senator DeConcini. Next we will hear from Roy Cawley, President, Real Estate Division, Barron Collier Enterprises.

Mr. Cawley, due to time restraints your full statement will appear in the record. If you would summarize it for us, please?

STATEMENT OF ROY E. CAWLEY, JR., PRESIDENT, REAL ESTATE DIVISION, BARRON COLLIER ENTERPRISES, WASHINGTON, DC

Mr. Cawley. Thank you, sir.

Senator DeConcini. I do want the record to show, Mr. Cawley, that this Senator is most impressed with the time that your clients have put forward in developing a comprehensive package here, the long hours and days, the expert planning and legal fees and travel in putting this together. I realize that there is a monetary incentive here on behalf of your clients, but there has also been certainly a dedication to find a solution here with the city of Phoenix, accommodating the veterans, and working with the delegation. For the record, I want to thank you for that.

Senator McCain. Mr. Chairman, could I add to that and echo those remarks? Mr. Cawley has dealt in an open and above board fashion with everyone those who have disagreed and those who have agreed with him. Our offices have the best of relations with him, and we hope that you are now eligible for dual citizenship in Florida and Arizona——

Senator DeConcini. If you register before November, that would be fine. [Laughter.]

Senator McCain. Thank you, Mr. Chairman.

Senator DeConcini. Please go ahead.

Mr. Cawley. Thank you, Mr. Chairman and Senator McCain. I have my statement which I will enter into the record, if that's all right.

Senator DeConcini. Without objection.

Mr. Cawley. We also have an agreement that we would like to enter into the record, which is the agreement between the Department of Interior and the two respective Collier families signed earlier this year.

Most everything that I was going to discuss has already been more eloquently stated by the earlier witnesses, so I will confine my comments to a couple of points not previously addressed. One, I have considered dual residency in Arizona and Florida; I think that's a great concept.

In the terms of the process that we have gone through over the past 2½ years, we found that it has been much more intense and with greater public input than we had anticipated. Certainly the Arizona and Florida delegations, the mayor and the city council as well as the environmental and Indian communities have approached this concept cautiously and in great detail. As a result, the product is well tested and seasoned.

There was one other point I would like to address, which is the developer agreement we've negotiated with the city of Phoenix. This negotiation required over a year to complete. It was required as a result of the instructions we received from the Arizona delegation, which were that "You must be able to work out the issues with the city, with the ITCA, with the veterans before you come before us, and therefore we'd like to see a composite package."

The developer agreement that was reached with the city of Phoenix calls for a very unique process wherein the development program will be done in a public forum. There are public commitments as to hearings, and therefore this becomes very unusual relative to the way the development process usually transpires. In most instances a plan is created by the developer; it is then submitted to the city council or other jurisdiction, and then the public debate proceeds. In our process, we have to go through the public process, in the selection of architects, land planners, engineers, and other groups; determining the design criteria, reviewing preliminary plans, selection of alternative concept and the preparation of the plan to be presented to the Council. So in fact, we are true partners from the start in the process.

I think the importance of the public process becomes clear as you look at the possibility of other bidders that could potentially be involved if they perceive the values to be greater than what we would define them to be.

The entire process will be public, and therefore other bidders will have the advantage of following it progressively, as I know some are currently. At the point where we elect the option they will have not only 90 days to respond, but in fact 120 days, because there is a 30-day time frame in which the Interior Department has to publish any pertinent information, which will already be of record in the city of Phoenix.

Any serious bidders having the opportunity to follow this process as it is initiated and through completion, plus having the period of time from our election of 120 days will have had adequate time to determine values.

The Florida lands have been well-documented as to importance. They are significant, as I am sure other witnesses have already ascribed to and will ascribe to later. I can add nothing further to that issue.

This process has extended over 2½ years and we hope it will be completed during this session. We look forward to that occurring. This hearing certainly has been one we've looked forward to. We believe we have worked responsibly with all of the parties involved, and are certainly willing at this point to answer any questions you may have.

[Prepared statement of Mr. Cawley and the referenced agreement appear in appendix.]

Senator DECONCINI. Mr. Cawley, for the record—and if you can be brief, it would be helpful—maybe a summary is included, but the proposed exchange agreement that you have offered there, can you give us a synopsis of what it does in just a couple of minutes?

Mr. CAWLEY. Certainly. The exchange agreement fundamentally exchanges 108,000 acres of land in Florida for approximately 68 acres of land at the Indian School site in Phoenix. The rest of that land will go to, one, the city, 20 acres; two, the Veterans Administration, 11.5 acres; three, the State Veterans Administration, prospectively, 4.5 acres; and then the equalizing payment from the Collier families of $34.9 million, with the Florida lands being evaluated at $45.1 million. We have a three-year time frame in which to go through the process of zoning, and we have to advise the Department of Interior 135 days prior to the expiration of that three-year period as to what our intentions are to proceed with closing of the option.

Attendant to that is also the opportunity of outside parties to bid on the Arizona property. If they bid a higher price than what we've associated with the property, which is right now estimated to be $80 million, then we have a right of first refusal. They have a 90-day period after the 30 days Interior has to publish the information to prepare and submit their bids.

I think that in summary, that is the transaction.

Senator DECONCINI. Now, my last question, Mr. Cawley—this is not meant to be contentious by any means, but one of the problems we're facing, or at least I anticipate we're facing, with this bill is that we have constantly reduced the amount of dollars for Indian education. We well know why, which is because the amount of land has been reduced based on an appraised value.

My question to you: Is your client able to pay anything more than the $34.9 million that is in this exchange agreement for the amount of land that is in this exchange agreement?

Mr. CAWLEY. No, sir. We think that those are the values that are fair and reasonable. We think that if the Arizona lands are evaluated at a higher value as a function of the bidding process, we will then have the opportunity to determine if in fact a higher price should be paid. We don't believe that to be the case at this point in time.

Senator DECONCINI. I have no further questions.

Senator MCCAIN. Let me ask just one question. Would you review the agreement with regard to oil and gas leasing on lands that you have kept the oil and gas subsurface leasing rights on?

Mr. CAWLEY. Yes, sir; in the 1974 original Big Cypress legislation, the Collier families were allowed to maintain their mineral interests, as they would in this particular instance. In negotiating the agreements with Interior Department we went through the oil and gas stipulations by which those lands could be explored and, if exploration were successful, how the hydrocarbons could be extracted.

There is a very detailed set of stipulations which have been reviewed by the various environmental groups, as well as the State of Florida and other groups who would be interested in the impacts of exploration and extraction. As you recall, under S. 90 those also require that specific rules and regulations be adopted within a nine-month period after the passage of S. 90, directed specifically toward Big Cypress. All of those rules and regulations and stipulations are in the agreement that we signed with Interior.

Senator McCAIN. Does that mean that you couldn't explore without permission of the National Park Service?

Mr. CAWLEY. That's correct. We have agreed in the agreement with the Department of Interior that we would be bound by their rules and regulations prior to when the title to the Florida lands would be conveyed to the Federal Government. We've done that by contract, so they have the right to put their rules and regulations in place, and we have to have permits from them before we can explore on those lands.

Senator McCAIN. Thank you very much, Mr. Chairman.

Senator DECONCINI. Mr. Cawley, I do have another question.

Am I correct that in that agreement there is some reference—and maybe you can explain this a little further—about the war memorial? And that there is some commitment on your part, if you are the developer or whoever might succeed you, to maintain the war memorial, but the agreement is not specific as to whether or not it will be maintained on the property left for development or not. Can you comment on that?

Mr. CAWLEY. Yes.

Senator DECONCINI. Are you willing to commit to maintaining the war memorial on the property itself?

Mr. CAWLEY. Yes; we agreed to do so, and we are willing to do so.

Senator DECONCINI. You are?

Mr. CAWLEY. Yes.

Senator DECONCINI. And if that is not clearly defined in there, you are willing to have it clarified?

Mr. CAWLEY. Yes.

Senator DECONCINI. What about other "historical buildings"? In your preliminary plans do you have any assessment of preserving any of the historical buildings there for part of the development, as an attraction, or is that at all under consideration?

Mr. CAWLEY. No; we do not have any plans to do so. If you look at the locations of those particular buildings as they exist today, once you take out the land for the Veterans Administration and once you try to define the lands that the city is going to have ownership to, it's very difficult to determine how those buildings can be preserved in their current locations. I know that Interior Department has agreed that any kind of historic information and data that could be required or obtained from those is certainly available to any of those parties who are interested in that, but we have not looked at preserving those structures.

Senator DECONCINI. Very good. Thank you. I have no further questions.

Senator McCAIN. Thank you, Mr. Cawley.

Senator DECONCINI. Our next panel will be the Honorable Nora Garcia, Chairperson, Fort Mojave Tribe, accompanied by John Lewis, Executive Director, Inter Tribal Council; also Mr. Caleb Roanhorse, Executive Director, The Navajo Nation.

Ladies and gentlemen, because of time restraints we would ask that you submit your full statement for the record and that you summarize for us this afternoon.

STATEMENT OF HON. NORA GARCIA, CHAIRPERSON, FORT MOJAVE TRIBE, ACCOMPANIED BY JOHN LEWIS, EXECUTIVE DIRECTOR, INTER TRIBAL COUNCIL OF ARIZONA

Ms. GARCIA. Good afternoon, Senator DeConcini, Senator McCain. My name is Nora Garcia. I am Chairperson of the Fort Mojave Tribe and vice-president of the Inter Tribal Council of Arizona, an organization of 19 tribal governments in Arizona. I appreciate the opportunity to comment on the proposed disposition of the Phoenix Indian High School property. I have a written statement that I will be submitting for the record.

On February 13, 1987, the Inter Tribal Council of Arizona provided testimony on its concerns regarding the closure of the Phoenix Indian School to the House Interior Committee at hearings in Phoenix. On July 30, 1987, testimony was again presented to the committee in Washington, DC, that reiterated the Inter Tribal Council of Arizona's position on the closure of the Phoenix Indian School.

We, the Inter Tribal Council of Arizona, continue to maintain our position on the Phoenix Indian School, which is that the school not be closed, but remain open for no less than 15 years while educational, economic, and social resources are developed in local Indian communities and until alternative arrangements are made in the State of Arizona to meet the needs of the students and the potential students served by the school.

Inter Tribal Council of Arizona has given careful consideration to the critical needs of the Indian students of its 19 member tribes. We have concluded that one means of serving social and educational needs of Indian youth would be, one, to establish a Federal trust fund which would be funded by proceeds equal to at least 45 percent of the value of the school property; and, two, to transfer an undivided interest in five acres of the school property to the Inter Tribal Council of Arizona member tribes, with income from the property to be deposited into the trust fund.

In developing this proposal we gave first priority to the need for an immediate and secure cash flow to provide supplemental adolescent care and educational programs for Indian youth. We support the establishment of a trust fund to generate cash flow. Interest from funds deposited in the trust fund would be used for such adolescent care activities including but not limited to transportation, village- or community-based youth programs, supportive family services, substance abuse treatment and prevention programs, diversion programs, mental health treatment for the students 'emotional support, parent effectiveness training, cultural awareness programs, counseling services, foster and shelter care, independent living, and other services identified in the July 31, 1986 study earlier mentioned.

In addition, the funds would be used for supplemental educational activities including but not limited to alternative school programs, recruitment of drop-outs for school reentry, school-based day care for adolescent parents, school-based truancy programs, school social workers, and village and community tutorial and remedial programs. The funds might also be used for design, construction, and renovation of shelter and group home facilities, satellite learning centers, and alternative schools.

Our second concern is the need to mitigate the impact of inflation on the purchasing power of the interest from the trust fund. For this purpose we seek beneficial interest in five acres of choice school property.

The member tribes are well aware of the long-term potential for capital appreciation of the school property. Nevertheless, we believe that to speculate in property and receive a lesser amount of cash is to speculate in the lives of our children. We choose to invest in our children today, not in property.

Third, we would propose a revision that would continue the operation of the Phoenix Indian School until such time as the monetary proceeds from the sale of the school property are deposited into the Inter Tribal Trust Fund, and that adequate funds are appropriated annually to maintain a quality education and residential school program.

In the event the legislation does not include such a provision, then appropriations should be earmarked for the special supplemental education and adolescent care needs of the Inter Tribal Council of Arizona member tribes until such time as income is available from the Inter Tribal Trust Fund.

Fourth, the Phoenix Indian School lands have been made generously available to the city of Phoenix in the past for public schools, parks, and other purposes. As the proposed additional free transfer of land to the city of Phoenix, the State of Arizona and the Veterans Administration directly reduces the size of the trust fund, Inter Tribal Council of Arizona proposes amendments that would do four things:

One, require the city of Phoenix to pay a reasonable amount for the 20 acres of Phoenix Indian School to be conveyed to it for park and recreational purposes;

Two, modify provisions that would require the Veterans Administration to pay for no more than 10 acres of land for administrative and parking purposes;

Three, delete provisions related to the conveyance of school property at no cost to the State of Arizona for a veterans' home and require instead that the State, city, or purchaser acquire the 4.5 acres at $1.17 million per acre; and

Four, assure that the trust fund for the membership of the Inter Tribal Council of Arizona remains at 95 percent of the total trust funds.

Navajo enrollment at the Phoenix Indian School for the past 17 years has averaged 6.5 percent. The enrollment of Inter Tribal Council of Arizona tribes has averaged more than 90 percent. If the enrollment of Inter Tribal Council of Arizona and Navajo students at Sherman Indian High School in California is factored in, Inter Tribal Council of Arizona combined enrollment today is 20 times greater than Navajo enrollment at the two schools.

Navajo on-reservation boarding resources far exceed those of the Inter Tribal Council of Arizona member tribes. In fact, there is unused boarding school capacity on the Navajo reservation that could easily absorb the very small number of Navajo students attending the Phoenix and Sherman schools. There is an acute shortage of boarding facilities for Inter Tribal Council of Arizona tribes and it will be many years before such capacity will become available.

Before World War I, most Indian people in Arizona were not legal citizens of the United States, and when the United States entered the war in 1917, Indians were exempt from the draft. However, many Indian men and women voluntarily registered in the armed services and many gave their lives in defense of their homelands.

During World War II, 25,000 Indian men and women served in the armed forces of the United States. Many of them came from Arizona and served with highest distinction. Students from the Phoenix Indian School were a part of the American Indian forces. A war memorial presently stands on the Phoenix Indian School grounds that recognizes some of these students.

Again during the Korean and Vietnam conflicts, students from the school left to participate in the military. Their honorable service to the country was a source of Indian community pride. Under the proposed legislation, the Veterans Administration will be provided 11.5 acres of Phoenix Indian School land with no obligation to pay for the land at fair market value. However, archival documents suggest that the VA hospital was allowed by the Government to locate on Indian School land because there was no Indian hospital in Phoenix; the VA hospital was originally considered as a possible joint facility to serve Indian health needs.

The majority of reservations in Arizona are in rural areas, necessitating long drives and overnight accommodations when Indian veterans seek health care services. The VA should be directed to take appropriate action at their facilities to accommodate Indian veterans traveling to cities such as Phoenix for health care services.

In addition, the Inter Tribal Council of Arizona wishes to have the firm assurance that the war memorial monument with the names of the veterans who attended the school will be preserved with dignity on the school property. We note that paragraph 7(c) in "An Agreement Among the United States of America, Collier Enterprises, Collier Development Corporation, and Barron Collier Company" requires preservation of the memorial either on or off the school property.

Inter Tribal Council of Arizona recommends that Congress direct the Department of Interior to work closely with tribes throughout the Section 106 process of the National Historic Preservation Act, including the planning for public information activities, and that the Department of Interior undertake a study of the historical and cultural values of the Phoenix Indian School property. No buildings or portions of the property should be eliminated form the study. The study should include, as a major element, the gathering of oral history information from former students of the school.

The Council continues to recommend that sufficient land be retained by the Secretary of the Interior to serve as a site for any Phoenix Indian School building, determined through the 106 process, to be preserved for its historic and cultural values.

I thank the committee for providing an opportunity to present testimony on the Phoenix Indian School land exchange.

[Prepared statement of Ms. Garcia appears in appendix.]

Senator DeConcini. Thank you very much.

Mr. Roanhorse, if you have a full statement we would appreciate it if you would summarize it, due to time constraints. We will put the full statement in the record.

STATEMENT OF CALEB ROANHORSE, EXECUTIVE DIRECTOR, THE NAVAJO NATION, WASHINGTON, DC, ACCOMPANIED BY J. PETER SEGALL, EXECUTIVE VICE-PRESIDENT, THE MADISON PUBLIC AFFAIRS GROUP, INC., WASHINGTON, DC

Mr. Roanhorse. Thank you, Senator DeConcini and Senator McCain, for the opportunity to present our testimony. Before I go on I would like to state for the record that today marks the anniversary of the Navajo Economic Summit that was held at Tohatchi, and that the Navajos appreciate that effort.

S. 2420 is a complex piece of legislation involving approximately 104 acres of prime development property. In the event the Collier family exercises the option to purchase the property under the terms of an exchange agreement ratified by this legislation, approximately $34.8 million will be available for deposit into two educational trust funds. Section 202(e) of the bill provides that the proceeds are to be allocated between the two funds, with 95 percent of the payment being deposited for the benefit of those tribes belonging to the Inter Tribal Council of Arizona, and the remaining 5 percent for the benefit of the Navajo Nation.

We support the concept of creating separate trust funds; however, as to the question of equitable distribution of proceeds into the funds, I must ask you to carefully consider a Navajo Tribal Council resolution that was enacted last April. This resolution, which will accompany my written statement, called upon the Congress to amend the legislation before you today, such that, one, proceeds equalling no less than 50 percent of the appraised fair market value of the property be set aside for the two trust funds; and two, that the proceeds be apportioned between these two trust funds according to the ratio which the total Arizona Indian population aged 16 and under bears to the Navajo population similarly aged.

The Navajo Tribal Council further proposed that as an alternative to receiving its proportionate share in the form of a cash outlay to its trust fund, the Navajo Nation is prepared to negotiate with the private parties involved in the disposition of the property, either with, one, an equity and cash flow interest in the property which would establish the Navajo Nation as a joint venture partner in its development; or, two, outright partition and subsequent Navajo tribal ownership of a portion of the property.

I am sure, Mr. Chairman, you can understand that to us the Phoenix Indian School represents more than a prime development property. Since 1960, more than 4,000 Navajo students have graduated from the school, and countless more attended the school earlier.

The closure of Phoenix Indian School is a matter of great importance to the Navajo Nation and the other Arizona Indian tribes. Whether or not these historical facts are important in the context of today's hearing depends on whether you believe that the existing educational opportunity is sufficient to meet the needs of the Navajos and the 19 other Arizona Indian tribes, but I know that you recognize the enormous educational deficit that we face as Navajos. I know that you understand that elementary and secondary education of our young Navajo men and women will determine whether they go on to frustration and hopelessness or on to a vocational school or college and to self-sustaining careers benefitting their families and their tribes.

Therefore, you can certainly understand that the Navajo Nation would rather see the school not close. We believe there is a trust responsibility on the part of the Federal Government to assure that a high quality, accessible elementary and secondary education is available to every young Indian, and we believe that as a minimum precondition of the closure of the school and disposition of the property, the educational needs of the Navajo and other Arizona tribes must be looked to and taken properly into account.

First, consider the historic use of the school by Navajos. We believe that historic use, as well as present-day Phoenix Indian School enrollment patterns, should impact the proposed legislation and establishment of the funds.

Second, we can look at the recent use and enrollment. During the 1986–1987 school year, 13 percent of the students enrolled in the school were Navajo, which was the third-largest enrollment of any Indian tribe.

And third, with respect to the educational needs of the Navajo population today, 43 percent of our population is under 16 years of age, and the average age is just 17.5 years. According to the 1980 census, Navajos represent 64.8 percent of all Arizona Indians aged 146 or under. Furthermore, our education needs are enormous. More than 3,000 high school-age Navajos are currently not enrolled in any training program or school.

Before I close, Mr. Chairman, I would like to briefly comment on one other provision of the bill, section 202(d), which sets forth the allowable uses of the trust income. Section 202(d) presently limits those uses. We would request that these allowable uses be broadened to include vocational and higher education. This is because the educational needs of our population do not stop with high school graduation. We as tribal governments must look at the educational needs of our population holistically and devote resources where they are needed most acutely.

Mr. Chairman, in closing, we are well aware that no legal document binds this Congress or any party connected with the sale of the Phoenix Indian School property, to give the Arizona Indian tribes a specified share of the proceeds. Rather, we appeal to your sense of justice and to historic interpretation of the government-to-government agreements, and to look to the sale of this property as a means of furthering the Federal Government's trust obligation to provide for the educational needs of our people. Without an adequate education our youngsters truly have no hope. Serious careers and stable incomes will be beyond their grasp.

Mr. Chairman, in asking for an equitable share of these proceeds we are asking only for a chance to move our educational standards a notch closer to those which non-Indian students coast to coast in this country today take for granted as a matter of right.

Mr. Chairman, we will be happy to receive questions so that we can adequately respond.

[Prepared statement of Mr. Roanhorse appears in appendix.]

Senator DeConcini. Thank you, Mr. Roanhorse. We appreciate the Navajo interest in this subject matter and your involvement here. I do want the record to show that the Inter Tribal Council of Arizona has really been a forthright leader in this. I know that your statement is not at all enthusiastic in supporting this legislation, but I compliment you and Ms. Garcia and the members of the Inter Tribal Council of Arizona for their involvement in sitting down and working with all the parties here, trying to mold a legislative solution that would take into consideration many of your needs.

It appears to this Senator that Phoenix Indian School is going to close. As you know, some of us have fought for years to keep that open, even for a period of time in opposition to the chairman of the subcommittee, as well as the Administration. I don't know how we're going to avoid closing that school even if we do nothing, even if we pass no legislation. I think the school is going to close, and the property would then be put up for sale. I have reluctantly concluded that we have to move on some legislation here.

But I am very sensitive, as my colleague here is, on the need—as he pointed out to the Administration witnesses here—for education for our Native Americans and the trust responsibility for it.

If I understand your testimony, Ms. Garcia, you feel that the amount that we're talking about here is inadequate for the trust needs; and second, that the entities—mainly, the city of Phoenix and the Veterans Administration—should pay for the property that is being set aside. Of course, that works two ways. For instance, if we had the Veterans Administration pay for it, that would mean that they would have that much less money to treat veterans, some being Native Americans and some not. The same with the city of Phoenix. There are many Native Americans who don't live on the reservation who consider themselves part of the city of Phoenix, so we get into a public interest here which disturbs me. I only say that so you will understand why I would love to see a greater amount of funds set aside, if I only knew how to balance the needs of some very important public interests that also serve our Native Americans in Arizona.

What I do want to particularly ask you about is the trust fund that is set up. We are advised that one of the provisions in the negotiations with the Inter Tribal Council of Arizona on how the trust funds would be invested gives a couple of different options to the Secretary. One is that the interest rate be used in determining the interest due on the trust fund payments payable by the purchaser shall be the interest rate being offered on bonds payable in 30 years sold to the United States, etc., and then it puts a floor and a ceiling on the interest rate of no lower than 8.5 percent or higher than 9.0 percent.

Am I accurate that the Inter Tribal Council of Arizona wanted that provision in there? And if so, why did you want to put a ceiling on the amount of the interest rate?

Mr. Lewis, can you help us?

Mr. **Lewis**. Senator DeConcini, that provision was provided, as you stated, as an option for consideration. One of the concerns was the fluctuation of interest. We were trying to at least establish the accommodation for a guaranteed minimum cash flow. That was one of the options that we saw that could address that particular concern.

Senator **DeConcini**. Is there a reason that there is a ceiling on what the interest rate could be? I can see the desire to have a floor on it, but I wondered why——

Mr. **Lewis**. We felt, in approaching that, that appeared to be a reasonable projection of the treatment of that particular interest-bearing activity.

Senator **DeConcini**. I realize that's a minor point, but it troubled me and I didn't understand the reasoning for it. Would you have any opposition if we took out the ceiling and just left the floor in that particular option?

Mr. **Lewis**. That would be satisfactory.

Senator **DeConcini**. Now, Mr. Roanhorse, the Navajo position is clear to this Senator, at least, and certainly the fact that you have more students there and have historically had more students. One of the efforts of this bill, quite frankly, that may not be totally fair to the Navajo Nation is to provide some educational funds for the less financially well-off tribes and Native Americans in Arizona, and that's one of the reasons that the division is set out at 5 percent.

The Navajo Nation, through leadership and good investment but also a large territory and a large population, seems to have other resources. Can the Navajo position be altered in light of the needs of some of these other Native American tribes in our State that just don't have any resources, or very little resources? Can you comment?

Mr. **Roanhorse**. Mr. Chairman, I think the Navajo, even though it may seem like they have all the resources—we must take into consideration that they have a large population, also. As it is right now, given the allocations that we receive, they do not sufficiently provide for everything that we request.

So yes, we would be in a position for compromise or negotiation. We surely do realize that we have other Indian tribes that may need some of these resources.

Senator **DeConcini**. Senator McCain?

Senator **McCain**. Thank you, Mr. Chairman.

I would just like to reemphasize to these witnesses that no one is suggesting that this trust fund in any way replace present funding. In fact there is a crying need, as we all know, for additional Federal funding to take care of the basic educational needs. I know I speak for Senator DeConcini and all the other members of this committee when I say that we would not allow it to somehow replace present funding. We have a long way to go before we address the educational needs of Indians throughout this country, much less Arizona. We view them strictly as supplemental funds.

We have some hard choices to make, and we will continue to have those. When we consider this issue of closing or keeping open the Phoenix Indian School there is a factor here, and that is the overwhelming number of Indian parents—like non-Indian parents—who prefer to have their children educated close to home. That's why the initiative of construction of Tohono O'odham High and Hopi High and hopefully other educational institutions on reservations will prove to be more valuable in the long run.

I only have one question of you, Mr. Roanhorse. In her testimony, Ms. Garcia states that Navajo enrollment at the Phoenix Indian School for the past 17 years has averaged 6.5 percent. Do you disagree with those numbers?

Mr. ROANHORSE. Senator McCain, I have with me some enrollment data that we got from the Phoenix Indian School that says otherwise.

Senator McCAIN. I would appreciate having that information because——

Mr. ROANHORSE. Yes, it will be part of our written statement.

Senator McCAIN. Thank you, because if Ms. Garcia's numbers are correct and the percentage enrollment is relatively accurate, the division of the trust fund—I would be very interested in looking at your numbers, as well.

Do you have any comments, Ms. Garcia or Mr. Lewis?

Mr. LEWIS. Well, I think one of the things is that the approached that has been used in those numbers could be questioned. But basically we are working from the same numbers, as was presented; the difference is that we drew the line in terms of where we started. We used the past 17 years, whereas they went back to not that long a period.

Senator McCAIN. Yes. There's that old comment about statistics. Thank you very much, Mr. Chairman.

Senator DECONCINI. Ms. Garcia, I have one other question. In your testimony you make some reference to "accommodation," I believe you said, of Native American veterans attending or going to the veterans' hospital. Are you talking about housing accommodations there, or exactly what? Can you explain that a little bit?

Ms. GARCIA. I would just say that when they go there for services, they have to travel long distances. A lot of them don't have the resources to stay overnight. It just seems that their needs are not being met when they do go to the hospital.

Senator DECONCINI. So you're talking about just those coming from reservations?

Ms. GARCIA. Right.

Senator DECONCINI. You would hope that the Veterans Administration could provide some overnight accommodation?

Ms. GARCIA. Right.

Senator DECONCINI. Thank you. I have no further questions. Thank you very much.

Our next panel is Paul Pritchard, President, National Parks and Conservation Association, accompanied by a former colleague of mine and brilliant law student at the University of Arizona, Mr. Jim Webb, Regional Director, Wilderness Society, Coral Gables, Florida; Joni Bosh, Chair Sierra Club; and James Pierce, President, National Federation of Federal Employees.

I would ask, ladies and gentlemen, if you would summarize your statements due to the time constraints. We will try to get another panel on after you.

STATEMENT OF PAUL PRITCHARD, PRESIDENT, NATIONAL PARKS AND CONSERVATION ASSOCIATION, WASHINGTON, DC, ACCOMPANIED BY JIM WEBB, REGIONAL DIRECTOR, WILDERNESS SOCIETY, CORAL GABLES, FL

Mr. PRITCHARD. Thank you, Mr. Chairman. I am Paul Pritchard, President of the National Parks and Conservation Association. As you noted, I am accompanied by my friend and co-worker in the conservation movement, Jim Webb, who is the Florida representative of the Wilderness Society. We are submitting testimony today for 11 national and local environmental conservation organizations who are also members of the Everglades Coalition.

Mr. Chairman, I would like to submit my testimony, as you so invited us, and would like to respond to specific points which were mentioned today so that we might deal with concerns that I know that this committee has been wrestling with over this timeframe.

Let me begin, though, by commending the members of this Arizona delegation and the Florida delegation for working out what we believe is a very unique, sound, and logical solution to a very important issue with many interests. You have encouraged and helped us all achieve that resolution.

First of all, Mr. Chairman, I think Senator Graham expressed it extremely well when he noted that the Everglades area itself is one of the most important in the world today. It is not only a world heritage site, but it is also an international biosphere reserve. This particular piece of area that we're concerned about in the Collier exchange is, we believe, crucial to the survival of the Everglades. In fact, we would suggest that words such as "worthless swamp land" show the lack of understanding, as Senator McCain mentioned, of the importance of that wetlands and how crucial it is.

One point that was not brought out as I listened today, Senators, was the fact that this area is not only important as it relates to the Everglades and Big Cypress and to the numbers of endangered species and other resources, the Florida manatee, the panther, others, but also it is one of the most critical to the Caribbean ecosystem. Our role and responsibility in that broader water resource area is important to recognize as we look at these important pieces of property.

Second, we believe that the exchange that you all have helped us craft by encouraging us all to work together is a unique, exceptional, and essential opportunity for us to protect critical lands which are, as we have all mentioned, of national significance. It is land that has been addressed in a number of ways on both sides, both States, as being important. We recognize that there are many interests involved and we would only note that as far as we are able to assess, appraisals made of the property in Florida—which we consider ourselves to be more acquainted with than those in Arizona—are fair and reasonable and followed the standards that we would all, as taxpayers, want to be assured have been addressed.

However, we also realize that there are important resources that cannot be valued, and you and others know those values in terms of endangered species and resources. The children of Florida, for example, identified the Florida panther as the State animal, and we think that's an important statement and why we are so concerned about the preservation of this panther habitat.

This area is very much threatened. It is threatened by the potential, if we do not act, of the land being divided by private property owners who have a right to deal with their property as they so wish for residential development, for great pressures for agricultural lands and uses that are moving from northern Florida and elsewhere to southern Florida. We are also concerned about oil and gas and the ability to deal with that in a uniform and consistent manner. All these are threats which we believe will be exacerbated if we are not able to move forward with this important exchange.

I should also mention that we think that the exchange is appropriate and timely because of other items, mentioned by Senator Graham—the Interstate transfers and other current events that are occurring at this very time.

Finally, Senators, may I mention that we are concerned about the Park Service's authority to regulate oil and gas. We would simply mention that there is a need in the proposed exchange to not bargain away the authority of the National Park Service to protect surface resources in oil and gas development. Mr. Webb is an authority and has worked closely with this and would be happy to respond more specifically on that. We are concerned that the Congress make clear that no diminution of Park Service authority occurs so that we are able to protect this in this exchange.

Finally, may I also mention that we have emphasized again and again the importance of these lands. We appreciate your concern about this. We believe that all parties are in a "win/win" situation. Really, what we hear today is the question of how much of the pie we each receive, but we do think that this does represent the best, reasonable, and logical solution to a very important issue.

Thank you, sir.

[Prepared statement of Mr. Pritchard appears in appendix.]

Senator DeConcini. Thank you.

Ms. Bosh.

STATEMENT OF JONI BOSH, CHAIRPERSON, SIERRA CLUB, GRAND CANYON CHAPTER, PHOENIX, AZ

Ms. Bosh. I want to thank you all for allowing us the opportunity to come speak. We are very excited to have, at last, a chance to speak to the specific legislation which is before us today.

The Sierra Club has been following this issue for over 2 years. Mr. Cawley came to our group and spoke to us about it. We opposed the concept, and now oppose the legislation. We would like to see the acquisition of the Everglades and the disposition of the Indian School properties separated. I will explain that more fully in a moment.

First, let me point out some of the flaws in S. 2420 from the Phoenix perspective. We are convinced that most of the major and important alternatives for the use of the Phoenix Indian School haven't been fully considered yet. For example, the Sierra Club has long maintained that if the school were to close, the next best use for the site would be as public open space, whether as green space or as a cultural or historic park. We're not alone in that opinion;

everyone from Barry Goldwater down to the Citizens' Advisory Committee to the City on the Phoenix Indian School and about 2,000 citizens who responded to a survey last summer feel much the same way.

We also have heard of other people looking at several other options, such as an Indian Educational Cultural Center or a free enterprise zone. We were particularly interested in an option wherein the property would be mostly a park, with part of it set aside for some kind of carefully and creatively controlled development that would generate income for the Indian community, and park maintenance. This could also be financed, perhaps, for the short term through something like a tax abatement program such as the city of Phoenix now has for both the Renaissance Projects and the Rouse Project downtown.

We would hate to see a premature decision made regarding the school. The Phoenix Indian School Citizens' Advisory Committee to the Phoenix City Council, learned that the staff has not had a chance to look at any of those other options at all. Without careful analysis, any decision would be premature.

Incidentally, the Citizens' Advisory Committee suggested to the council last fall eight or nine ways for the council to purchase the property. I think we're all quite aware of the fact that there's no way the Federal Government can give that large a parcel to the city, so the CAC encouraged the Council to find other options, such as a bond issue or taxing or other trades to acquire the property. I don't think those have been fully explored either.

Second, while we would agree that the Everglades are very ripe for acquisition—the Sierra Club has worked for decades for their protection and the expansion of the swamp area—we feel that because those options haven't been looked at thoroughly, the Phoenix Indian School is not ready for disposal. There is disagreement, as you have heard, over whether the school should be closed, and if it is, how the funds should be handled.

There is no plan in Phoenix for the eventual use of the property. Until now there has been no long-range guide besides the 1986-adopted city plan, which itself is fairly vague. As the chairman of Encanto Village that helped put that section of the city plan together told me, everyone assumed the school would be open for many years, or that some activity dealing with Indian education would be there, and perhaps over time that the land would gradually become available for public uses.

Without a consensus or a specific plan for the site in place, it really is hard to determine the property's value, as everyone has attested to so far. Therefore, we think we are really running a risk of not generating the maximum value from that property, whether it would be to split it between park purposes and Indian uses that would generate income for Indian education, or as a trade, or just to generate money for the Land and Water Conservation Fund.

Everyone has talked about the GAO report, and I think that underlined that until the final zoning and a plan is done, you're not going to know the value of the school.

One question that comes up here that I would like to ask concerns the bid period. In S. 2420 it talks about a 30-day bid period. Some have mentioned that has been changed to 90 or 120 days.

Has that been changed in the Senate bill or just the House version?

Senator **McCain**. The House version is 90 days.

Ms. **Bosh**. Okay. We would say that the longer the bid period, probably the better. While potential purchasers would probably watch the zoning process, there are still a lot of "hoops" a bidder would have to jump through to meet the requirements of the legislation, so you need to provide adequate time to generate the best bid, assuming this trade is approved.

Third, even if we did liquidate the Phoenix Indian School property assuming that was the only way to acquire the Everglades and, supposedly, save taxpayer dollars, we're concerned that the disposal process laid out in the bill ties the Government's hands and is not truly fair. The bid process is not a full, open, competitive bidding process and while there is a 90-day period for others to bid, there is obviously preferential treatment given to the Colliers who have first right of refusal. In the past, that practice has had a depressing effect on some land trades in Arizona. In northeast Scottsdale the State announced a trade and accepted offers. The winning bidder participates in a planning process much like what's proposed here, then others have a chance to bid on it but the original bidder can watch the winning bid. This discourages bidding.

Fourth, we think the 30-year payment plan, in which 30 annual interest payments are paid into the educational funds is unnecessary. We think it would make more sense for the Government and the taxpayers alike to get the lump sum payment up front and invest it at the highest rate possible. If we are trying to generate income, that would seem to us to be far more logical.

From a larger perspective, we don't think the public interest is being served by the erosion of the purpose of the Land and Water Conservation Fund as it is manifested in this bill. The assumption is, and the argument has been made, that with the deficit so high we simply can't afford to go out and spend Land and Water Conservation Fund money for the exact purpose for which it was created. The Sierra Club happens to believe that the Everglades are absolutely magnificent and are of national importance, and therefor should be purchased immediately and outright with Land and Water Conservation funds—all of it, not just a part of it. I don't have a map with me, but as we understand it there are several other landholders in that area who own parts of the expanded preserve as defined by S. 90 which should also be acquired.

We may be jeopardizing that land by risking it in a cumbersome and questionable land trade which could stretch out for several years.

By purchasing the Florida holdings with Land and Water Conservation Fund money, we wouldn't even come close to depleting the fund. That's a $900 million fund that is renewed annually, not from taxes, but from offshore leasing revenues. If it was important not to deplete the fund, the most extreme tactic the Department could have taken would be to buy the Everglades and then plan with the city—or citizens and the city—to develop the Indian School and sell it off to the highest bidder and replace not only the expended Land and Water Conservation funds but also put more money into the Indian education trust funds. But as far as I can tell from my correspondence with DOI, they haven't looked at that option.

Senator DeConcini. Ms. Bosh, I'm going to have to ask you to wind up because a vote has just started and I'd like to finish this panel before we go vote.

Ms. Bosh. Fine. I'll talk quickly.

We would agree that the deficit must be addressed at some point, but conservation programs haven't necessarily caused that entire deficit and this doesn't seem to be the place to cut back. I doubt if purchasing the Everglades would make a dent in the deficit; it's approximately $49 million that we're talking about. This proposed fund really does underline the need for dedicated Land and Water Conservation funding, as Representative Udall and the President's Commission on Americans Outdoors have recommended. I think this particular situation, where we're not able to protect the Everglades with that fund, underscores the necessity for a dedicated fund.

The one question I leave you with is why are we pinning the acquisition of the Everglades on the zoning process in another State over another piece of land. Instead of protecting the Everglades, we're going to wait and see how a zoning negotiation evolves in Phoenix. If the plan, for some reason, is not acceptable to all parties involved in that planning and zoning process, the Collier companies could back out of the trade. We wonder where that would leave the Everglades if a consensus plan does not emerge from the process. I think we're jeopardizing the Florida acquisition with this trade.

I leave you by repeating that we would like to see these two processes separated. Go ahead and acquire the Everglades, and then work with the city, the citizens, the neighborhood groups, the preservationists, the education interests, the Indian communities, the environmental groups to work out what's best for the city and the Indian School property in Phoenix.

Thank you.

[Prepared statement of Ms. Bosh appears in appendix.]

Senator DeConcini. Thank you.

Mr. Pierce, you've got about 4 minutes.

Senator McCain. Could I just make one quick comment?

Senator DeConcini. Sure.

Senator McCain. Is it true that the Florida Sierra Club supports this legislation?

Ms. Bosh. They have taken no position in support of it.

Senator McCain. Is it true that the national Sierra Club has taken a neutral position on this issue?

Ms. Bosh. In this case, I represent the national Sierra Club.

Senator McCain. You are representing not just Grand Canyon, but the national Sierra Club?

Ms. Bosh. Right. We start from the grass roots up.

Senator McCain. Our information was that the Florida Sierra Club—and I'd like to have it clarified for the record—supports this legislation, and that the national Sierra Club would remain neutral on the issue.

Mr. Bosh. No.

Senator DECONCINI. Mr. Peirce, I'm sorry for the time restraints, but you've got about 3 minutes and 52 seconds.

STATEMENT OF JAMES PEIRCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, WASHINGTON, DC, ACCOMPANIED BY CHARLES BERNHARDT, LABOR RELATIONS SPECIALIST

Mr. PEIRCE. Thank you, Mr. Chairman. On behalf of the NFFE we do appreciate appearing here, and I will make it very short. I'm sure you can read our statement and you know what our position is.

With me is my staff member, Charles Bernhardt. If there are any questions, I may need him to help me out.

Of course, the NFFE has continually opposed the closing of the Phoenix Indian High School. The off-reservation boarding schools fill a vital role for Indian students whose educational and social service needs cannot be met in any other setting.

In our testimony—and I won't go into the details now—we have laid out what we feel are some reasonable requests, I think, to take care of some of the problems of the Indian children's schooling, as well as the BIA employees which we represent.

While we find the closure of the Phoenix Indian School to be a tragic mistake, we ask that the Senate do all in its power to protect the students and staff should the school actually close its doors.

Mr. Chairman, I will conclude with that so that we can get on with it.

[Prepared statement of Mr. Peirce appears in appendix.]

Senator DECONCINI. Thank you, Mr. Peirce. We appreciate the position of your Federal employees as to this school. I think a lot of people have benefitted from the dedication of those employees over many, many years.

Thank you very much, ladies and gentlemen. We're going to recess for about 10 minutes and then we'll do the sixth panel, about 10 or 12 minutes from now.

Mr. PEIRCE. Thank you, Mr. Chairman.

[Recess.]

Senator DECONCINI. The committees will reconvene.

We will hear from our final panel, Ms. Jean Chaudhuri, North American Indian Women's Association, Tempe, Arizona, and Mr. Richard Young, Executive Director, Native American Heritage Preserve, Phoenix. Would you please come forward?

We ask that you summarize your testimony for us. Your full statements will be presented in the record. Please proceed.

STATEMENT OF JEAN CHAUDHURI, NORTH AMERICAN INDIAN WOMEN'S ASSOCIATION, TEMPE, AZ

Ms. CHAUDHURI. Senator DeConcini and committee members, my name is Jean Chaudhuri. I am with the Phoenix Indian School Preservation Coalition. I am the coordinator, as well as a member of the North American Indian Women's Association.

I would like to share with you that Native American Indians across the Nation are really feeling a burden. As tradition tell us, whether it was the trail of tears when the land of Native American

Indians was taken away from them by legislation, whether it was the long walk of the Apaches again took land away from these American Indians, we thought that history would not repeat itself as time marched on.

In 1891, the U.S. Government wanted to assimilate Native American Indians and educate them, to civilize them. A good concept. The beauty of it was that the Native American Indians reluctantly came to the Phoenix Indian School. But as the days melted into months and the months melted into years, the Indian students began to like the rigid, rigorous military training that they had at Phoenix Indian School. They had their disappointing days and they had their days of knowing that education was a tool to create an understanding between the Indians and the non-Indians.

This was the spirit of cooperation, because whenever the land needed to be purchased to establish an Indian school, the legislatures appropriated $6,000 and the citizens raised $3,000, and they purchased the land for $9,000. A spirit of cooperation.

NAIWA, Native American Indian Women's Association, Arizona Chapter has opposed the land exchange for several years. They have written resolutions. They have written letters and submitted petitions saying that this is not the day to take education away from our people; this is not the day, because back in 1891 dignity was given to Native American Indians, the dignity of pursuing higher education and understanding of the non-Indian world. The Native American Indian women stood firm, gently talked, and sent letters to their Congressional leaders; and yet, their voices were not heard.

The Native American Indian women again took charge and established a coalition of different groups within the community. They have a working relationship with the Sierra Club. They have cooperation with the California Legal Indian Services and Sherman Indian School. They also have an endorsement from the National Indian Housing Agency, 149 of them; also, the National Grey Panthers, saying that it is wrong. This is not the time to take the Indian school away. Let us not close it.

And yet, we have other friends, such as the National Congress of American Indians, who wrote a resolution in the month of May, 2 months ago, opposing it. And also, in one of our statements Barry Goldwater said that if he was in the Senate, this would not happen.

Today is not the day to finalize the closing of the Phoenix Indian School. On June 17, 1988, the National Congress of American Indians in their resolution of support to prohibit the Phoenix Indian School closure stated that "There are 9,000 Arizona Indian high school-age students who are not attending any school because public schools have failed them." According to testimony submitted by the Navajo Nation on July 30, 1987, there were at that time over 3,000 Navajos aged 16 and under who have not been successful in reservation schools, nor enrolled in suitable school or training programs. Navajo Tribal Chairman Peter MacDonald stated to the Navajo Area School Board in March 1988 that they should be brought to justice for educational malpractice.

In considering these statistics we ask the question, are the BIA schools really providing services for Native American Indians? In spite of their weaknesses and strengths, we say that this is a place where many Indians who may not have the transportation to get to school—such as the Wallopi Indians or the Havacupai Indians in the canyons who have to go to school round-trip 150 miles. That is not accessibility to education. Also, the White Mountain Apaches have 800 children graduating from their junior high; they do not know where they are going to place many of them.

Indian educational interests need to be protected. We put our trust in our Congressional representatives because they are our elected officials. We want them to take the leadership of finding alternate ways. We say that it's much too soon to close the schools. It's much too soon to let the legislation go. There has to be a way of providing educational services for Native American Indians.

Why is the Congressional delegation of Arizona in such a hurry to trade the most valuable piece of property in the west, when the needs of our Indian children have not been met? Why would the Bureau of Indian Affairs spend money to do a study on the unmet needs of the boarding school students and then ignore the recommendations? And the Inter Tribal Council was given the charge to study the students. There is much unmet need. Also, the Inter Tribal Council suggested that they would have 15 years to phase out if land exchange was to take place.

History cannot be ignored. Oftentimes, people say that Native American Indians—the grass roots Indians—are silent if they do not speak on their behalf. Yes, the constituents at the Inter Tribal group—wives, mothers, daughters—have spoken up through NAIWA. History cannot be ignored since 1891, when the intent of the United States was to educate, but the beauty of that rigorous type of life in the school—we saw young Indians emerging to be good warriors, going off to war. On the Phoenix Indian School campus there is a war memorial dedicated in honor of our Indian veterans. Do you remember? All of us, as Native American Indians, should remember the raising of the flag on Iwo Jima by Ira Hayes. It is an historical fact that the Pima Tribe is very proud of. The Navajo code-talkers during World War II provided critical assistance in coded communications that could not be deciphered by the enemy.

They have been honored on various occasions. It is a sad commentary that this rich history can be wiped away by the closure of Phoenix Indian School. History is education because we can learn from the past. Culture is education because we can learn from each other, in doing so, strengthening each other's values. Education is liberation. Take away liberation, and then you encourage poverty. Take away that educational liberation, and then you force students to continue in illiteracy. We ask you as our Congressional leadership to listen to us and to follow our dreams.

I would like to say that we do oppose S. 2420. It is premature. Give Native American Indians the opportunity to sit with you and to share with you and give alternative programs to you because together we can plan. Together we can indeed show what democracy is all about. There is such a thing as economic and educational democracy.

I thank you for this time. May we walk together in the spirit of working out solutions, not to divide and conquer as in the past.

Give us dignity. Given dignity, do not strip funding from us. Thank you.

[Prepared statement of Ms. Chaudhuri, appears in appendix.]

[Petitions are retained in committee files.]

Senator DeConcini. Thank you, Ms. Chaudhuri.

Mr. Young.

STATEMENT OF RICHARD YOUNG, EXECUTIVE DIRECTOR, NATIVE AMERICAN HERITAGE PRESERVE, PHOENIX, AZ, ACCOMPANIED BY BETTY MARIE BACH, SECRETARY-TREASURER

Mr. Young. Mr. Chairman, my name is Richard Young. I am a Tlingit Indian. With me here today is Betty Marie Bach.

We are here today to offer—suggest—that there is a better alternative use to the Phoenix Indian School property. We feel, and know for a fact, that the preservation of the culture and history of the Indian has been neglected, and we feel that when these facts are made public and thoroughly studied, no one can argue with the self-evident truth that the preservation of Native American Indian heritage and culture should be addressed with immediate positive action.

Concern should be shared by all. I state this because the generation of Indian elders who carry our only known Indian history and traditions is fast fading away. I personally must live with this fact. In the nation of the Tlingits, our Tlonglton Tribe were the mighty ones; but today, there only remains one elder.

The need and the urgency for the preservation of Indian culture and history are self-evident. How best to address this need?

We feel this endeavor should be entrusted to a site of significant historical value, related to the direct history of the Indian. The Phoenix Indian School property meets all these values. For 97 years these grounds have felt the footsteps of the Indian. For 97 years, thousands of Indians have been nurtured and developed here. These grounds, Senator DeConcini, are Indian history.

We ask you in your final deliberations, please give this utilization plan its serious due. Allow our culture and history to be forever preserved on this historical site.

Thank you.

[Prepared statement of Mr. Abbot Sekaquaptewa, presented by Mr. Young, appears in appendix.]

Senator DeConcini. Mr. Young, thank you.

You know, for 3 years now the Senate has mandated in the legislation a prohibition of the closing of that school. It has gotten more difficult each year because of the dwindling population and the cost, and the BIA's unwillingness to foot that cost there. I have to say to you, how do you answer that? I don't believe I can continue to keep that school open because of the financial strains. I'm going to do it again this year, if I can, and maybe I'll try to do it again next year, but I see the road coming to an end. That's why we're here. What do we do about that?

Obviously your testimony is, "don't close the school." There has been no stronger supporter of that than this Senator. But it has been at odds with the Administration, and I suspect that the Administration that follows this one, whether it be headed by Mr.

Bush or Mr. Dukakis, is most likely to once again say that for the number of students that are there, we cannot afford to maintain that school.

What's your response to that, both of you?

Mr. YOUNG. My response, Senator DeConcini, is that we have plans to establish a national culture and historical center on that site. In the construction of that culture and historical site we are not going to come to the Government for any dollars. The money will come from the corporate sector and the private sector and individuals.

Senator DECONCINI. Do you have money raised now for this, Mr. Young?

Mr. YOUNG. We do not have money raised now. The reason for this is that we have only been in existence for two months. I was out of the State for two and a half years, and I only became aware of this problem this past May. I had people come to me because I had worked with a similar project like this 10 years ago, and in the process of working with that project 10 years ago I've seen corporations like Caterpillar Diesel and Xerox come forward for the preservation of the original inhabitants of this North American continent.

Senator DECONCINI. Do you have any commitments from any of those companies?

Mr. YOUNG. I have talked to Honeywell. I have talked to Phillips-Dodge, and their response is that when this is taken out of the political arena, then I will be invited to make my presentation, and I will be heard.

Senator DECONCINI. Ms. Chaudhuri?

Ms. CHAUDHURI. My response is that I am a firm believer that our governmental officials and community people should cooperate on certain projects. When Shillato Indian School closed in Oklahoma, this piece of property—the U.S. Government gave the authority that this land would be turned over to the Cherokee Nation with two other tribes. And when they did that, they more or less utilized that property; not for a boarding school, but for other supplemental educational programs. And then the Concho Indian School in Oklahoma, which was closed—again, community people took the leadership, in conjunction with Congressional representatives. There was a phase-out period where the Government funded them until they could find their own money. That was a joint working relationship with citizens, the U.S. Government, and other people who would help. I understand the Concho Indian School had a lot of volunteer teachers and volunteer people to refurbish the old Concho Indian School.

Senator DECONCINI. In the testimony we had this afternoon the BIA indicated that they would spend $1.5 million or so on the education of the remaining children there; and yet, we're talking about putting together $34 million or $35 million, and maybe if we're lucky more than that down the road, for additional or supplemental funds for Indian education. Isn't that important also, to get more funds for Indian education than what is actually going to be spent there? Even a 10 percent return on that trust fund would be more than twice as much as the BIA plans to spend on that school this year.

Ms. CHAUDHURI. Yes; that is true. But when rational people get together—that piece of land is economics to anyone, whether Indians or non-Indians. And the facilities that are there—some of the buildings are relatively new and in good shape.

We had a task force; we had a wonderful working relationship with our Congressional delegation. I firmly believe that the community could raise the money and utilize those buildings. These dormitories house 1,500 people. You could take 15 units and have some sort of convention center for Native American Indians, which would generate its own money. But the beautiful thing about this, Senator DeConcini, is that when our Indian kids graduate from that Indian school and go back to isolated reservation areas, there is no educational support system out there for them; but in the heart of Phoenix we have the community colleges, we have the sixth largest university, we have vo-tech places that are going on. So there is no reason why we cannot get the volunteer support group of the community to provide services. Other communities have done that, such as at Concho Indian School.

Senator DECONCINI. Do you have any support? Have you met with the Inter Tribal Council? Do they support your propositions?

Ms. CHAUDHURI. My proposition—I have not presented this. What I have done is asked for support as far as signing of petitions. On May 12 at the Inter Tribal Council, 14 of the representatives there signed off on my petition opposing the closing of the Phoenix Indian School. Inter Tribal has been wonderful; any time I've been wanting statistics from them, John Lewis has provided those statistics for me. In fact, the statistics I've used today are from John's office, and I have every firm belief that given the opportunity, with the coalition of community people, Indians, non-Indians, and Inter Tribal, we could come out with a plan that would satisfy everyone.

Senator DECONCINI. Thank you.

Thank you very much. The hearing will cease at this time. We will keep the record open for 2 weeks for any supplemental presentations or statements that people want to put in.

Thank you very much for being with us today.

[Prepared statement of Hon. Tom Lewis appears in appendix.]

[GAO Report of May 11, 1988, submitted for the record, appears in appendix.]

[Whereupon, at 4:58 p.m., the committees adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF TERRY GODDARD, MAYOR
CITY OF PHOENIX, ARIZONA
FOR PRESENTATION TO UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
AND SUBCOMMITTEE ON LANDS, NATIONAL PARKS AND FORESTS
HONORABLE DANIEL K. INOUYE AND HONORABLE DALE L. BUMPERS,
CHAIRMEN
WASHINGTON, D.C.
JULY 25, 1988

I am pleased to represent the City of Phoenix today before the distinguished members of these two Committees and present testimony regarding S. 2420, the Arizona-Florida Land Exchange.

The Phoenix Indian School is a key element of our City. At 105 acres, it is, by far, the largest parcel of undeveloped land in central Phoenix and has been operated as a Federal preserve since the 1890's. Citizens have always assumed that, given its valuable contribution to Indian education, the School would continue as a central city open space for many, many years.

In early 1985, it was reported that the Indian School might be closed. Soon afterwards, City officials were surprised to learn that the federal government had been working with a private development to dispose of the property. Citizens of Phoenix were justifiably disturbed that neither their elected officials nor the Inter-Tribal Council of Arizona had been involved in any deliberations regarding the closure of the school or the future use of the property. In March of 1985, Members of the City Council and I met with our Congressional delegation and requested the involvement of the citizens of Phoenix in any development of the Indian School land.

An ad hoc subcommittee of the City Council and a Citizens Advisory Committee were organized to review the City's options _if_ the Indian School Property was to be traded to a private party. I testified in February 1986, and July 1987, before Congressional panels regarding the importance of this land to the City.

In response to questions asked during the February field hearing in Phoenix and at the urging of members of the Arizona delegation, the City agreed to make every attempt to work out an agreement on the development of the Indian School site with the Collier Companies of Florida. At that time, Collier was the only private party involved in negotiating for the Indian School property. City representatives spent more than a year with Collier representatives conceptualizing and negotiating a method for City involvement.

When these discussions were taking place, the Citizens' Advisory Committee conducted a poll concerning the Indian School distributed with nearly 300,000 city water bills. The results showed that the citizens of our City are strongly in favor of keeping a maximum amount of Phoenix Indian School site as open space. Unfortunately, the City was and is not able to purchase this property at commercial valuation. City officials had hoped that the Interior Department would agree to a long-term payment schedule at recreational land values so the City of Phoenix could feasibly attempt to purchase the entire property. I presented this plan to the Subcommittee of the House Interior and Insular Affairs Committee at a hearing on the matter last summer.

The Department of Interior, Fish and Wildlife Service, was intimately involved in the discussions with Collier and, at a crucial moment, helped to make an agreement possible. The Department, recognizing the City's strong desire to have some part of the property guaranteed as open space in any development of the Indian School property, offered the City fee title to approximately 20 acres for recreational purposes only. This parcel represented the amount of an appraised valuation over and above the price needed to obtain Collier's Everglade area property in Florida. With the 20 acres in hand, the City negotiators were able to complete a plan with two basic points:

1. The City and Collier would jointly plan the Indian School Site by choosing a development team, reviewing options and ultimately adopting a specific plan for development.
2. Collier would grant options to the City, at the Collier Companies' cost, so it could purchase additional open space parcels after plan approval.

The agreement negotiated with the Colliers was discussed extensively by the Citizens' Advisory Committee, the Council Ad Hoc Subcommittee on the Phoenix Indian School and by the Phoenix City Council. In addition to the terms of the agreement, these groups inquired into the development experience and long-term goals of the Collier Companies. Through these hearings, it was determined that:

- Collier was committed to a project of the highest quality;
- Collier would engage in good faith in a planning process designed to create a unique space for both public and private enterprise at the Phoenix Indian School location;
- The 20 acres to the City of Phoenix would not be the maximum amount of public open space in the final proposal, rather it would be added to substantial open space in the plan which would ultimately be adopted for the remaining 80 acres; and, finally,
- Collier would develop the property over the long-term and was not interested in simply planning and selling.

For these reasons, the City Council approved the agreement with the Collier Companies, provided, of course, that Collier obtains title to the property from the Federal Government. (Attached is a copy of the agreement in full).

The agreement with Collier was not intended by the Council to be exclusive. I told members of the House Interior Committee last July and during the City Council meeting earlier in that month, that if another qualified development interest were to make the same or a better offer to the City of Phoenix, that it would receive similar consideration. In fact, the City Council held a hearing last July with representatives of the Phelps Dodge Development Company which proposed to enter into the same -- non-exclusive development agreement as agreed to by the City and the Collier Companies. No final action was taken by the City Council on the Phelps Dodge proposal because representatives of the Company asked for a continuance. Subsequently, the Collier Companies proposal was selected over the Phelps Dodge proposal by the Arizona Congressional delegation in October, 1987.

On another matter related to the development of the property, the City of Phoenix continues to believe that priority should be given to the recognition of the significant historic resources located on the site. The City of Phoenix participated in negotiations between the Department of Interior and the Arizona State Historic Preservation Office regarding the disposition of significant historic properties on the property. Documentation of the historic properties has been prepared by the National Park Service.

The Phoenix City Council has assumed that the desirability of exchanging the various lands in question are, and should be, a matter of national importance to be decided by the Department of Interior, your committees and ultimately, the U.S. Congress. Therefore, the City Council has made no recommendation about whether the trade should go forward. If a trade is authorized, we can support it if the conditions described above are fulfilled. Any modifications which further reduces the amount of public open space, increases the cost, or restricts the public process with the developer, could not be supported by the City.

In closing, the following summarizes the City of Phoenix's position regarding the land exchange proposal:

- o A minimum of 20 acres of open space provided to the City at no cost;
- o The developer be part of a joint planning process with the City to develop a specific plan for the Indian School property and provide a purchase option to the City for individual parcels;
- o To maximize the efficiency of the plan, the Veterans Administration should participate in the joint planning process;

- The City have the first option to purchase, at recreational valuation, land not accepted by the Veterans Administration and/or by the State of Arizona.

I hope this information is helpful to the Committees and will be useful in answering questions you might have about the land exchange proposal.

STATEMENT BY THE HONORABLE DALE BUMPERS

REGARDING S. 2420 - THE ARIZONA-FLORIDA LAND EXCHANGE ACT OF 1988

FIRST, I WANT TO EXPRESS MY APPRECIATION TO THE MEMBERS OF THE INDIAN AFFAIRS COMMITTEE AND COMMITTEE STAFF FOR THEIR COOPERATION IN HOLDING THIS HEARING. I ESPECIALLY WANT TO THANK SENATOR INOUYE, CHAIRMAN OF THE INDIAN AFFAIRS COMMITTEE, FOR TAKING THE LEAD IN SCHEDULING THIS HEARING SO THAT THE SENATE MAY CONSIDER THIS IMPORTANT LEGISLATION.

S. 2420 WOULD RATIFY A LAND EXCHANGE AGREEMENT RECENTLY ENTERED INTO BY THE DEPARTMENT OF THE INTERIOR AND THE COLLIER FAMILY. UNDER THE EXCHANGE AGREEMENT, THE UNITED STATES WILL RECEIVE 107,779 ACRES OF LAND IN COLLIER COUNTY, FLORIDA OWNED BY THE COLLIERS TO BE USED FOR (1) EXPANSION OF THE BIG CYPRESS NATIONAL PRESERVE; (2) COMPLETION OF THE FLORIDA PANTHER NATIONAL WILDLIFE REFUGE; AND (3) ESTABLISHMENT OF THE TEN THOUSAND ISLANDS NATIONAL WILDLIFE REFUGE. COLLIER WILL ALSO PAY $34.9 MILLION TO EQUALIZE THE VALUES OF THE EXCHANGE.

IN RETURN, COLLIER WILL RECEIVE APPROXIMATELY 65.5 ACRES OF LAND AT THE INDIAN SCHOOL IN PHOENIX, ARIZONA. MANY BELIEVE THIS FEDERALLY-OWNED TRACT OF LAND TO BE POTENTIALLY THE MOST VALUABLE PIECE OF REAL ESTATE IN ARIZONA. IN ADDITION TO THE COLLIER PARCEL, THE CITY OF PHOENIX WILL RECEIVE 20 ACRES OF INDIAN SCHOOL LAND FOR A PARK; THE VETERANS' ADMINISTRATION WILL RECEIVE 11.5 ACRES FOR EXPANSION OF ITS EXISTING HOSPITAL ADJACENT TO THE INDIAN SCHOOL PROPERTY; AND THE STATE OF ARIZONA WILL RECEIVE A 4.5 ACRE TRACT FOR CONSTRUCTION OF A STATE

OPERATED VETERANS FACILITY.

THE $34.9 MILLION OF CASH EQUALIZATION MONEY WILL GO INTO TWO TRUST FUNDS IN THE TREASURY OF THE UNITED STATES TO BE USED TO FURTHER INDIAN EDUCATION PROGRAMS IN THE AREA.

MR. CHAIRMAN, LAST APRIL THE COMMITTEE ON ENERGY AND NATURAL RESOURCES ORDERED S. 90 FAVORABLY REPORTED. THIS MEASURE EXPANDED THE EXISTING BIG CYPRESS PRESERVE IN FLORIDA BY APPROXIMATELY 136,000 ACRES. AT THE TIME OF THE COMMITTEE MARKUP, THE ADMINISTRATION URGED US NOT TO PROCEED WITH THE CONSIDERATION OF S. 90 UNTIL THE COLLIER-DOI EXCHANGE (WHICH HAD ALREADY BEEN IN THE WORKS FOR APPROXIMATELY 1 YEAR) WAS COMPLETED. IN A LETTER TO ME DATED MARCH 30, ASSISTANT SECRETARY HORN ADVISED THE COMMITTEE THAT THE EXCHANGE AGREEMENT WOULD BE SIGNED AND PRESENTED TO THE CONGRESS IN APPROXIMATELY TWO WEEKS AND THAT THE COMMITTEE SHOULD DELAY ACTION ON THE BILL UNTIL AFTER THE EASTER RECESS.

WHILE THE COMMITTEE DID NOT COMPLY WITH THE ADMINISTRATION'S REQUEST, IT DID AMEND THE BILL TO ENSURE THAT THE EXCHANGE PROPOSAL, WHEN COMPLETED, COULD BE CONSIDERED AS AN AMENDMENT ON THE SENATE FLOOR. WE WAITED ALMOST NINE MONTHS BEFORE PROCEEDING IN THE SENATE AND THE EXCHANGE AGREEMENT WAS STILL NOT FINISHED. THREE MORE MONTHS WENT BY WITH THE MEASURE PENDING IN THE HOUSE AND STILL NO EXCHANGE AGREEMENT. THE CONGRESS FINALLY ENACTED S. 90 AND THE PRESIDENT SIGNED IT INTO LAW ON APRIL 29, 1988. THE EXCHANGE AGREEMENT STILL HAD NOT BEEN FINALIZED AND SENT TO THE CONGRESS. FINALLY, IN MAY OF THIS YEAR, THE AGREEMENT WHICH THIS LEGISLATION RATIFIES WAS COMPLETED - MORE THAN ONE YEAR AFTER WE WERE TOLD IT WOULD BE FORTHCOMING IN "TWO WEEKS".

MR. CHAIRMAN, I TAKE THE TIME TO REVIEW ALL THIS LEGISLATIVE HISTORY PRIMARILY TO MAKE THE POINT THAT WE NOW FIND OURSELVES IN THE FINAL DAYS OF THE 100TH CONGRESS. THE DEPARTMENT, THE COLLIERS, AND OTHERS ARE UNDERSTANDABLY ANXIOUS TO SEE THIS LEGISLATION APPROVED BEFORE WE ADJOURN _SINE DIE_ IN OCTOBER. I DO NOT BELIEVE THAT IS AN IMPOSSIBLE TASK. HOWEVER, I CAN ASSURE ALL PARTIES THAT THIS MATTER WILL BE CONSIDERED FULLY AND CAREFULLY BY THE ENERGY AND NATURAL RESOURCES COMMITTEE -- AS I KNOW IT WILL BE BY THIS COMMITTEE. IT IS NOT OUR FAULT THAT THIS MATTER COMES BEFORE US AT THE ELEVENTH HOUR AND, AS FAR AS I AM CONCERNED, THERE WILL BE NO RUSH TO JUDGMENT ON THIS EXCHANGE.

AGAIN MR. CHAIRMAN, I APPRECIATE YOUR COOPERATION IN SCHEDULING THIS HEARING TODAY AND LOOK FORWARD TO THE TESTIMONY.

OPENING STATEMENT OF SENATOR JOHN McCAIN
ON S.2420
THE ARIZONA--FLORIDA LAND EXCHANGE ACT OF 1988

Mr. Chairman, I would like to thank you and Chairman Bumpers for scheduling this joint hearing on S.2420, The Arizona--Florida Land Exchange Act. This is the second hearing that the Indian Affairs Committee has held on this issue and the third congressional hearing that Senator DeConcini and I have participated in.

Mr. Chairman, S.2420 provides for the closing of the Phoenix Indian School and sets forth a legislative plan for allocating the property at the site for future public and private uses. The legislation would ratify a proposed land exchange among the United States, Collier Enterprises, and Barron Collier Company. Under the terms of the land exchange, the Colliers would transfer to the United States approximately 108,000 acres of environmentally sensitive land in Southwest Florida in exchange for approximately 68 acres of the 104 acres at the site of the Phoenix Indian School in Phoenix, Arizona. The remaining 36 acres would be divided among the Veterans Administration, the City of Phoenix, and the State of Arizona.

Mr. Chairman, a lot of time and effort has been expended over the last year in putting this land exchange together.

Members of the Arizona congressional delegation have themselves been closely involved in the development of this exchange, and the Department of the Interior, Collier Enterprises, and Barron Collier Company have been working at this proposal even longer.

The outcome of these negotiations has resulted in what I believe to be a fair agreement for all parties and in the best interest of the United States. Not only will 108,000 acres be added to the Big Cypress and the Florida Panther preserves, but 11.5 acres will be provided for the expansion of the existing Veterans' Administration Medical Center. In addition, 20 acres is guaranteed to the City of Phoenix for use as a park, and 4.5 acres will be set aside for the State of Arizona should they elect to establish a State veterans' nursing home in the future. And finally, the Colliers would pay the United States $34.9 million which would be used to establish two educational trust funds for the educational, child welfare, and facility construction needs of Arizona Indian tribes.

A number of questions have been raised concerning the value of the Florida property involved in this exchange. These questions are wholly the result of confusion about the details of the long process underlying the Collier--Department of the Interior negotiation process. Nevertheless, some clarification is required. These questions suggest that the Florida properties have not been properly appraised, and that large portions of the tracts involved in the exchange are underwater and are not actually owned by the Colliers.

First, with respect to the values of the lands, the United States Department of the Interior performed appraisals of three of the four tracts of Florida lands, following standard appraisal practice and procedures used for all Interior Department land acquisitions. These appraisals were based on sales of comparable property in the area, and fully comply with nationally accepted commercial appraisal standards.

With respect to the value of the fourth tract, the parties initially set an estimated value of $26.6 million and agreed ultimately to rely on the outcome of a related Florida State Department of Transportation condemnation proceeding to confirm the accuracy of that value. In that proceeding, the value of the Collier land was determined pursuant to appraisals using standard Member of Appraisal Institute practices. These appraisals were undertaken and approved according to well-established Florida Department of Transportation and Federal Highway Administration practices. Under the Florida Department of Transportation proceeding, the value of the lands Collier owns and would convey under the Exchange Agreement was determined to be $28 million. The result is that the United States would be acquiring the largest tract in the Exchange at lower than its appraised value.

In short, all the values of the Florida lands were negotiated on the basis of standard commercial appraisal practices, undertaken by or on behalf of public agencies.

One of the four areas to be acquired in the Exchange is the land within the Ten Thousand Islands area. Approximately 4,000 acres in this area are below the mean high water line and are subject to an unasserted claim by the State of Florida. The remaining 15,000 acres of upland are clearly owned by Collier. In the Exchange, the Interior Department negotiated the 15,000 acres of the upland in the Ten Thousand Islands at $5.8 million. The Interior Department did not assign any value to the submerged lands, and Collier gets no credit for any value of the submerged lands in the Exchange. At the request of Interior Department, Collier has quitclaimed whatever claim of title it may have to the 4,000 submerged acres, but at no additional cost to the United States. If it is ultimately determined that Collier does have title to the 4,000 acres, the United States would have acquired tham at no cost. Even if it should ever be determined that the State owns them, these lands will still be in public ownership, which is exactly the right outcome from the perspective of environmental conservation. In either event, the United States has paid nothing for the small parcel of submerged lands in the deal.

Another question that has been raised concerns the value of the Phoenix Indian School property. For purposes of valuing the property, the Department of the Interior conducted two appraisals. The first appraisal found that if the entire property were developed at its highest and best use (i.e., high density, high-rise and commercial space), the present value of the property would be approximately $160 million. That appraisal was not accepted by the Interior Department because the consistent position of the City of Phoenix has been that the property would be zoned as a mixed use high- and low-rise development, and that every effort would be made to maximize public open space. The Planning and Zoning agreement between Collier and the City makes clear that this kind of mixed use zoning is the objective that all parties intend to achieve.

For that reason the Department of the Interior contracted for a second appraisal, which took into account the likelihood of mixed use zoning and greater public open space. That appraisal resulted in a value of $122.2 million for the total site. Because it will take some time for the zoning process to be completed, particularly given the level of public participation required upon the planning process, the appraiser was required to make assumptions as to the likely outcome of the zoning process. The GAO, in its review of the Phoenix appraisal, raised a concern that these zoning assumptions may prove incorrect. This is a legitimate concern; an appraisal is, in effect, on expert's best guess as to what a willing buyer will pay and a willing seller will accept for property in an arm's length transaction; it is therefore never a totally "reliable" test of the value of a piece of property. This is of particular concern when the property is not zoned, and elaborate assumptions respecting zoning have to be made. If ultimately the zoning permits more intense development, the property value will be higher. If the zoning is more restrictive, the property value could be less.

I am convinced that once the outcome of the zoning process is known, it is important that the value to be paid by Collier should be put to a test to ensure that the value received by the United States represents the full value that a willing buyer would pay. Thus, the only true test is to put the property on the open market, and test the price paid for the land under the Exchange Agreement against other competitive bids. For that reason, the bill requires that prior to the closing of the Exchange transaction, the property will be put up for competitive bid, and other parties will be given an opportunity to bid on the property. If higher offers are received, Collier, who has undertaken the complex zoning effort, will be given a right to match the higher offer. If no offers are received, the value we now assume for the Phoenix property will have survived a true market test and the Land Exchange can properly go forward.

Mr. Chairman, I realize there may be further concerns regarding this Exchange agreement which has already been through a long, difficult and complex process. The House will be taking a similar version of this bill to the floor on Wednesday. I look forward to working with my colleagues here in the Senate and in the House to work through any remaining issues and to answer any questions they may have regarding this exchange.

TESTIMONY OF SENATOR BOB GRAHAM

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

AND THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

IN REGARD TO S. 2420, THE ARIZONA/FLORIDA LAND EXCHANGE

JULY 25, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEES:

IT IS ESSENTIAL THAT WE SUPPORT THE ARIZONA/FLORIDA LAND EXCHANGE EMBODIED IN S. 2420. WITH THE PASSAGE OF S. 90, THE BIG CYPRESS NATIONAL PRESERVE ADDITION BILL, CONGRESS RECOGNIZED THE IMPORTANCE OF DESIGNATING THIS ENVIRONMENTALLY VALUABLE LAND AS A PRESERVE TO SERVE AS A PART OF THE LARGER BUFFER ENVISIONED FOR THE EVERGLADES NATIONAL PARK.

THE PEOPLE OF FLORIDA WERE THE FIRST TO UNDERSTAND THE FRAGILE NATURE OF THE EVERGLADES AND THE COMPLEXITY AND VITALITY OF THEIR ECOSYSTEMS. IN 1983, FLORIDA ANNOUNCED THE SAVE OUR EVERGLADES INITIATIVE. THROUGH THIS INITIATIVE -- A PARTNERSHIP OF THE FEDERAL GOVERNMENT, LOCAL AGENCIES, PRIVATE CITIZENS AND THE STATE OF FLORIDA -- WE ARE ATTEMPTING TO TURN BACK THE CLOCK.

BY THE YEAR 2,000 THE EVERGLADES WILL LOOK AND FUNCTION MORE LIKE THEY DID AT THE TURN OF THE CENTURY THAN THEY DID IN 1983. A CRITICAL ELEMENT OF SAVE OUR EVERGLADES IS THE PRESERVATION OF EVERGLADES NATIONAL PARK BY AN AGGRESSIVE PROGRAM OF LAND ACQUISITION WHICH WILL BUILD A "PROTECTIVE ENVELOPE" OR BUFFER AROUND THE PARK.

OVER THE LAST TEN YEARS -- AND MORE RECENTLY WITH THE INITIATION OF THE SAVE OUR EVERGLADES PROGRAM, FLORIDA HAS COMMITTED ITSELF TO CONTINUING TO BUILD THE BUFFER ZONE AROUND EVERGLADES NATIONAL PARK.

ULTIMATELY THE PROTECTED LANDS FOR THE ENTIRE EVERGLADES SYSTEM WILL TOTAL ABOUT 3,400,000 ACRES. ABOUT 3 MILLION ACRES OF THAT IS CURRENTLY OWNED BY BOTH THE STATE AND FEDERAL GOVERNMENTS. THE STATE OF FLORIDA DONATED MOST OF THE LAND FOR EVERGLADES NATIONAL PARK WHEN THE PARK WAS FORMED IN 1947. FLORIDA HAS ACQUIRED ONE MILLION ACRES WHICH PROTECT AND BENEFIT THE SUBSTANTIAL FEDERAL INVESTMENTS IN EVERGLADES NATIONAL PARK AND THE BIG CYPRESS NATIONAL PRESERVE.

IN 1974, THE STATE CONTRIBUTED $40 MILLION TO ACQUIRE 134,000 ACRES OF THE BIG CYPRESS NATIONAL PRESERVE AND DONATED 7,000 ACRES OF STATE LANDS. THE FEDERAL GOVERNMENT HAS SPENT AROUND $175 MILLION ON ACQUISITION OF 422,000 ACRES OF THE PRESERVE TO DATE. TWO THOUSAND ACRES OF THE ORIGINAL PRESERVE AUTHORIZATION REMAIN TO BE PURCHASED.

AS OF JUNE 22, 1988, THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT HAS ACQUIRED 43,850 ACRES IN THE EAST EVERGLADES AT A COST OF $15,383,131. THE RECENTLY ACQUIRED AEROJET PROPERTY OF

5100 ACRES IS INCLUDED IN THIS FIGURE. THE STATE, THROUGH ITS CARL AND ENVIRONMENTALLY ENDANGERED LANDS PROGRAMS HAS PURCHASED 17,280 ACRES IN THE EAST EVERGLADES AT A COST OF $10,574,560.

THE STATE HAS ALSO PURCHASED 54,136 ACRES NORTH OF THE BIG CYPRESS AREA, KNOWN AS THE HOLEY LAND AND ROTENBERGER TRACTS. WITHIN THE BIG CYPRESS PRESERVE ADDITION, THE STATE HAS ALREADY PURCHASED 11,323 ACRES. WITHIN FAKAHATCHEE STRAND, 46,569 ACRES HAVE BEEN PURCHASED AND 85 ACRES OF GOLDEN GATE ESTATES HAS BEEN ACQUIRED BY THE STATE.

GOVERNOR MARTINEZ HAS ESTABLISHED THE EAST EVERGLADES LAND ACQUISITION TASK FORCE TO DEVELOP A JOINT STATE-FEDERAL PLAN FOR ACQUIRING APPROXIMATELY 75,000 ACRES IN EAST EVERGLADES, INCLUDING A PORTION OF NORTHEAST SHARK RIVER SLOUGH.

THE BUFFER ZONE IS CRUCIAL TO THE SUCCESS OF THE SAVE OUR EVERGLADES INITIATIVE -- AND TO THE MAINTENANCE OF THE SECOND LARGEST NATIONAL PARK IN THE CONTINENTAL UNITED STATES. EVERGLADES NATIONAL PARK IS A TROPICAL AQUATIC PRESERVE -- ONE OF THE EIGHT UNITED NATIONS DESIGNATED INTERNATIONAL BIOSPHERE RESERVES IN THE WORLD -- THE ONLY SUB-TROPICAL PARK IN THE NATION'S SYSTEM.

UNLIKE ANY OTHER NATIONAL PARKS SUCH AS THE GRAND CANYON OR YOSEMITE WHICH ARE MORE OR LESS SELF-CONTAINED, EVERGLADES NATIONAL PARK IS DEPENDENT ON LANDS OUTSIDE ITS OWN BOUNDARIES -- DEPENDENT ON WATER WHICH CAN ONLY BE ENSURED IF THE LAND OVER WHICH THE WATER FLOWS IS PUBLICLY OWNED.

ACQUISITION OF THE BIG CYPRESS ADDITION, AS WELL AS THE FLORIDA PANTHER WILDLIFE REFUGE AND THE TEN THOUSAND ISLANDS INCLUDED IN THE EXCHANGE, IS ALSO NECESSARY FOR THE PROTECTION OF THE LARGEST NUMBER OF ENDANGERED SPECIES INHABITING ANY NATIONAL PARK IN THE COUNTRY. INCLUDED IN THAT NUMBER IS THE FLORIDA PANTHER -- THE SUBJECT OF HEROIC EFFORTS TO SAVE A DIMINISHING SPECIES IN RECENT YEARS.

AND AS CRITICAL AS PROTECTION OF THE ENDANGERED SPECIES IS THE PROVISION OF AN ENDURING DRINKING WATER SUPPLY FOR SOUTH FLORIDA.

THE FEDERAL/STATE PARTNERSHIP EXEMPLIFIES THE MODEL OF COOPERATION NECESSARY TO SECURE THE BUFFER AREAS TO PROTECT A NATIONAL TREASURE. S. 90 REQUIRES THE STATE TO PROVIDE TWENTY PERCENT OF THE ACQUISITION TO MATCH THE FEDERAL GOVERNMENT'S EIGHTY PERCENT. THE STATE'S TWENTY PERCENT SHARE UNDER S. 90 WILL INCLUDE ACQUISITION OF LANDS WITHIN THE ADDITION, BUT NOT IN THE EXCHANGE.

THE EAST EVERGLADES TASK FORCE IS LOOKING AT WAYS TO USE THE FEDERAL/STATE PARTNERSHIP TO ACQUIRE THE ADDITIONAL LAND FOR AN ADEQUATE BUFFER TO THE EAST SIDE OF THE PARK. WE NEED TO REDEFINE THE BOUNDARIES OF THE PARK AND THE BUFFER ZONE. THIS LAND EXCHANGE IS MERELY ONE MORE STEP IN THE ONGOING PROCESS OF PROTECTING THE PARK AND THE ENTIRE EVERGLADES SYSTEM.

THE FLORIDA DEPARTMENT OF NATURAL RESOURCES HAS EXAMINED THE APPRAISALS OF THE FLORIDA LANDS WITHIN THE EXCHANGE AND HAVE DETERMINED THAT AT TODAY'S DOLLAR, THE APPRAISALS FELL AT OR BELOW MARKET VALUE.

THE FULL 108,000 ACRES IN THE EXCHANGE ARE VALUED AT $45 MILLION. THE 70,010 ACRES IN THE EASTERN TOWNSHIP OF THE BIG CYPRESS PRESERVE ADDITION WERE APPRAISED BY BOTH DEPARTMENT OF INTERIOR AND THE COLLIERS AT $26.6 MILLION. THE 13,060 ACRES OF THE ADDITION ADJACENT TO ROUTE 29 IS WAS ORIGINALLY APPRAISED AT $13.2 MILLION, WITH A RESULTING NEGOTIATED VALUE OF $10.6 MILLION. THE ADDITIONAL LANDS WITHIN THE EXCHANGE INCLUDE THE FLORIDA PANTHER NATIONAL WILDLIFE REFUGE, NEGOTIATED FROM $3.97 MILLION TO $2.1 MILLION FOR PURPOSES OF THE TRADE. SIMILARLY, THE TEN THOUSAND ISLANDS LAND WAS ORIGINALLY APPRAISED AT $12.4 MILLION, WITH A FINAL NEGOTIATED VALUE OF $5.8 MILLION.

ACQUISITION OF THIS LAND SIMULTANEOUS WITH LAND ACQUISITION FOR CONVERSION OF ALLIGATOR ALLEY TO INTERSTATE 75 ALLOWS US TO MAKE A SMOOTH TRANSITION USING SIMILAR BASES FOR APPRAISAL, OFFERING PAYMENT FOR OWNERS' FULL SHARE OF THE PROPERTY TO SERVE BOTH I-75 EXPANSION AND BIG CYPRESS EXPANSION PURPOSES.

THE OIL AND GAS PROVISIONS APPROVED IN S. 90 DIRECT THE SECRETARY OF INTERIOR TO SET OUT REGULATIONS GOVERNING THE EXPLORATION, DEVELOPMENT AND PRODUCTION OF OIL AND GAS IN THE PRESERVE AND THE PRESERVE ADDITION, WHEREBY PERMITS WILL BE REQUIRED FROM THE NATIONAL PARK SERVICE. THESE PROVISIONS WILL ASSURE THE PROTECTION OF THE PRESERVE FROM IRRESPONSIBLE DEVELOPMENT. IN THIS LIGHT, THE EXCHANGE APPEARS TO BE ONE THAT IS FAIR AND GOOD FOR FLORIDA IN THE ACQUISITION OF VALUABLE LAND.

THE TIMELY ACQUISITION OF THIS LAND COULD HELP TO SAVE ONE OF THE MOST SIGNIFICANT AND ENDANGERED NATURAL RESOURCES ON THIS CONTINENT. THE EVERGLADES SYSTEM - OF WHICH THE BIG CYPRESS PRESERVE IS A CRUCIAL PART - IS ABSOLUTELY UNIQUE -- ONE OF A KIND. IT IS THE KEY TO THE SURVIVAL OF COUNTLESS ENDANGERED SPECIES -- PLANTS AND ANIMALS AND REPTILES -- ALL DEPENDENT ON THIS ONE FRAGILE LINCHPIN FOR THEIR OWN CONTINUED EXISTENCE.

WE HAVE AN OBLIGATION TO THE REST OF THE WORLD -- NOT JUST TO FLORIDIANS OR EVEN AMERICANS -- TO PRESERVE THE MYSTERIOUS BEAUTY OF THE EVERGLADES AND THE COMPLEXITIES OF ITS FUNCTION AS A WATER

PROVIDER -- TO PRESERVE ALSO THE SINGULAR PLANT AND ANIMAL AND MARINE LIFE SPECIES ONLY FOUND IN THE EVERGLADES HAMMOCKS AND MARSHES.

THE PRAGMATIC WAY TO FULFILL THAT OBLIGATION IS TO ACQUIRE THE LAND WHICH WILL PROVIDE THAT PROTECTION EXPEDITIOUSLY AND ECONOMICALLY.

THE LAND EXCHANGE WORKED OUT IN S. 2420 MEETS THAT CRITERIA AND IS WORTHY OF OUR ENTHUSIASTIC SUPPORT.

TESTIMONY
OF THE
HON. MORRIS K. UDALL
THE ARIZONA-FLORIDA LAND EXCHANGE ACT
JULY 25, 1988

Mr. Chairman, it is a pleasure to appear here today on behalf of the Arizona-Florida Land Exchange Act. This is a bill that many of us have worked on long and hard for quite some time. It has not been easy to satisfy the legitimate concerns of the many parties with real interests at stake in this exchange, including the Indian tribes of Arizona, the City of Phoenix, the State of Arizona, the Veterans' Administration and last but certainly not least, the taxpayers' of the United States.

We think we have put together a reasonable and defensible package that deserves your support. I won't go through all of its many aspects. Instead, I want to confine my remarks to a few particular areas of special concern.

Mr. Chairman, some critics have charged that this exchange represents a "sweetheart deal." This charge is easier to make than it is to demonstrate.

The lands involved in the Florida end of the transaction have all been evaluated by competent appraisers. As is usually the case in any land acquisition, the final price was negotiated between the two parties, in this case the Collier family and the Department of the Interior. The negotiated price was 7.6 percent above what the value assigned the lands by government appraisers and 23 percent below the value assigned by Colliers' appraisers. This is well within common practice.

While wrestling with the many difficult questions involved in this exchange last year, the Arizona Congressional delegation requested a GAO examination of the appraisals performed for both the Florida and Arizona lands. We knew that unless we could assure our colleagues that the appraisals had been competently and professionally done that neither we nor they could endorse this exchange.

In the case of the Florida lands, GAO found that all the appraisals save one had been competently and professionally done. That one exception, said GAO, was a relatively minor one with little impact on the final values assigned the property. GAO expressed some concern about other aspects -- for example, it thought the subsurface rights should have been acquired -- but found no basis whatsoever for the notion that a "sweetheart deal" is in the making.

I want to address one other point about the Florida lands. Many critics have sought to diminish the proposed acquisition by scoffing at what they call "swamp" lands. Leaving aside the fact that this inaccurately characterizes most of the property, I remain appalled that in 1988 people can still talk as if wetlands like those proposed to be acquired are not of great environmental significance. The fight to preserve the Everglades as one of the great natural wonders of the world has been going on for 25 years. In that time, the delicacy of the ecological balance of

South Florida -- and the danger that it is in -- has only become more alarmingly apparent. To sniff at this lands as "swamp," is to dismiss the Grand Canyon as a big ditch.

Turning to the Phoenix Indian School lands, our problem here was much more difficult. Two appraisals were performed on the property. The GAO report -- which, again, was requested by the Arizona delegation -- found both these appraisals competently and professionally done. But it found two major problems.

First, GAO said no matter how competent, no appraisal could really fix the value of this property until the City of Phoenix had clearly indicated what level of zoning and building density it would permit on the site. The City has stated unequivocally that it will not act on this score in the absence of a real developer with a real plan to develop the property. And no developer can come forward with such a plan unless he knows that he can acquire the property at a given price.

Second, GAO found that the exchange no longer fit the appraisals. In other words, the appraisals had examined the entire 104-acre site, but the exchange proposed to sell only 68.4 acres to the Colliers, while donating the remaining parcels to the City, the State and the Veterans' Administration. The price to the Colliers, who obviously are acquiring the most commercially value portion of the site, is a figure arrived at by prorating each acre equally and subtracting the value of the acreage not acquired by the Colliers from the selected appraised value. This, GAO said, is inappropriate.

Mr. Chairman, both of these criticisms are very valid ones and we in the Arizona delegation accepted them as such. That is why we took the Administration's proposed exchange and changed it in a way that we think answers both of these concerns.

The bill now requires that after a Specific Plan for development of the property is submitted to the Phoenix City Council that the United States will offer the 68.4 acres on the open market. Anyone can come in and make an offer on the property and will be able to do so with the benefit of the kind of knowledge the Colliers do not now have and which GAO said was essential to an accurate assessment of the property's worth.

They will have 90 days to make an offer superior to the Colliers'. If none are received, we will know that the market has decided that the property has been priced just about right or even over-valued. If a better offer is received, the Colliers' first will have the opportunity to match it. If they choose not to, the property will be sold to the higher bidder. The cash from the sale will be used to acquire the Colliers' Florida lands at 1987 prices, to pay their planning and zoning expenses and all of the remainder to finance the Indian trust funds.

This market mechanism assures the taxpayers full value for their property, answers the proration question and assures Arizona's Indian tribes the largest trust fund possible.

I would now like to turn to, and address, those provisions which affect the Indian people of Arizona. The Phoenix Indian High School was first established in 1891. Since that time numerous Indian people have attended this school and its alma mater today comprise a good number of the leaders of the various tribes of Arizona (Hopi Chairman, Colorado River Chairman). While this school is more just a piece of federal property to these individuals, it has not fully served the needs of the Indian community for several years. There are a number of reasons for the diminished services and enrollment levels at the school, but the most important thing for us to consider when we discuss closure of this school is the issue of how do we provide for those students who would have otherwise attended this institution.

I believe that the language which my Committee, working very closely with the Committee on Education and Labor, has developed incorporates several provisions which help to alleviate the impacts of closure on the students and their families. Additionally, the establishment of the two Tribal Trust Funds, one for the Navajos and one for the remaining 19 tribes, also allow the tribes a measure of control over what additional services they feel should be provided to their high school-aged children.

Let me briefly explain title II, which addresses the closure of the school and the establishment of the Trust Funds.

1. Closure of the School is authorized immediately, and the school is not to open in the upcoming school year. On this point we are flexible because of the time frames we are up against in passing this legislation.

2. That the BIA develop for each student who was enrolled last year, and who is pre-enrolled for attendance this year, an INDIVIDUAL EDUCATION PLAN to accomplish a variety of actions to ensure that these students are placed in a school setting most suited to their needs.
3. TRANSITION COSTS TO BE BORNE BY the Indian education and other BIA funds appropriated to maintain and operate this School. The transition costs of these students would encompass those needs identified under their Individual Education Plans for placement in other schools.
4. That the National Park Service be directed to manage, control and maintain this property after closure and until the exchange is consummated.
5. A TRANSFER OF RESOURCES SECTION THAT permits all of the educational and other personal property located at the Phoenix Indian School to be subject to acquisition preference by the Sherman Boarding School in Riverside, California to better accommodate those Arizona students who will be transferred to it as a result of the closure of the Phoenix School. That all Phoenix School employees be permitted the opportunity to have preference in transfer to the Sherman School as a result of the closure of this school.
6. That there be TWO TRUST FUNDS ESTABLISHED. One for the Arizona Inter-tribal Trust Fund (ITCA) serving 19

tribes, and one for the Navajo Trust Funds. The ITCA trust funds will be established from 95% of the Money Proceeds and the Navajo Trust Fund will receive 5% or 1/20th as one of twenty tribes in the State of Arizona.

7. That the FUNDS may be established in a lump sum payment, and only the interest may be utilized for educational and other student support services. OR that the Funds may be established by permitting the developer to make 30 annual payments, at not less than the amount would have been if the United States had made the investment. This second option permits the developer to hold in escrow the full Monetary Proceeds to go to the tribes and invest on their behalf to permit a greater yield than if the federal government had made the investment. The final payment would include all of amounts, capital and principle owing to the tribes.
8. The PURPOSE of the Funds will be to supplement any Federal efforts in educational or other support services that can help these students complete high school.

These are the major points to the Indian title of this bill. We, in the House, have tried to put in place as many protections as possible in the establishment of the Funds and in the transfer of the students who depended on this High School. Unfortunately, I am advised that the Administration has been considering opposing the establishment of these Trust Funds and prefer that any Money Proceeds remaining from any Exchange be deposited into the U.S. Treasury.

Mr. Chairman, I can think of no meaner-spirited effort by this Administration than to deprive the Indian people of Arizona the use of these monies to help meet the need of their children. The minimum amount to be available in these Funds would be approximately $35 million. This amount is not going to help this Administration in resolving the huge deficits that they face. Rather it is an example of the pettiness of certain individuals (in OMB and elsewhere) who would rather see these monies lost to a good purpose simply because they were unable to dictate the provisions of this proposed exchange. I urge you to stand strongly with the House on the provisions of this bill, but, in particular, in support of the Indian provisions which have been so carefully crafted over many months with input from the tribes, as well as from the other concerned Members of the House.

STATEMENT
OF
HONORABLE JOHN J. RHODES, III
- FIRST DISTRICT - ARIZONA
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS
ON
S. 2420 - ARIZONA/FLORIDA LAND EXCHANGE
JULY 25, 1988

Mr. Chairman, I join my Chairman, Mr. Udall, in support of S. 2420, the Arizona/Florida Land Exchange Act. The bill would accomplish many goals. First, through exchange, it would provide a mechanism for acquiring environmentally sensitive lands near the Florida Everglades to protect the endangered Florida panther and the manatee currently on privately-held developable lands. Second, it would authorize closing an Indian boarding school, which has experienced declining enrollment, and would provide a trust fund to assist current and potential Phoenix Indian School students. Third, it would transfer a parcel of the school lands to the Veterans Administration for expanding the Regional VA Medical Center in Phoenix. Finally, it would transfer a parcel of the school lands to the City of Phoenix for an urban park.

Mr. Chairman, the issue of greatest concern, both to the delegation and to the House Interior Committee, centered around how best to determine the true value of the Phoenix Indian School property. According to the General Accounting Office (GAO), this parcel may be the most valuable piece of urban property in the West. And, without a final development plan and zoning by the City, the GAO concludes additional appraisals would be only another guidepost based on assumptions, without determining true value. Our dilemma was how to best determine the fair market value.

As we know, only the marketplace can determine fair market value. In the floor substitute to H.R. 4519, the House counterpart to S. 2420 which we will consider later this week, we have attempted to create a market opportunity. The developer, the Collier family, has entered into an elaborate agreement with the City of Phoenix on a procedure for planning, zoning and developing the property in an open public process. Near the end of that public process, when the final plan and zoning are in place, the property, under our bill, would then be put on the open market for new bids for a period of 90 days. Should another purchaser make a higher bid, then the Collier's would have the right to match any better offers.

Mr. Chairman, I believe that the 90-day open bid opportunity is the only way we can assure the taxpayers that the ultimate purchaser of the property will pay fair market value, while still meeting the other goals of the bill, which are local and national in scope. I urge the Committee to review the House substitute, reintroduced as H.R. 5012, and to consult with the City of Phoenix and Colliers on this market opportunity.

Also, I would note that the compromise was worked out between the various committees of jurisdiction in the House--Interior, Veterans Affairs, Education and Labor, and Merchant Marine and Fisheries. I would like to commend those committees for the improvements they have made to the bill, particularly the efforts of the Chairman and the Ranking Member of the Veterans Affairs Committee on clarifying the land transfer to the Veterans Committee for expanding the VA Regional Center in Phoenix. As you may know, the Southwest has the fastest growing veteran community in the nation. Also, I would like to commend the Chairman and the Ranking Member of the Education and Labor Committee for making sure that none of the current students at the Indian School fall through the cracks. I know your Committees share the same concerns. Your suggestion on these matters are welcome.

S. 2420 and H.R. 4519 resolve several issues in Arizona and Florida, and important issues of national environmental interest. The legislation provides a real mechanism to reach our goals. Finally, Mr. Chairman, I note that the Administration supports this exchange. I urge the Committees to move quickly on the bill.

STATEMENT OF W.P. RAGSDALE, DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, BEFORE THE JOINT HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE SUBCOMMITTEE ON PUBLIC LANDS AND NATIONAL FORESTS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S.2420, THE ARIZONA-FLORIDA LAND EXCHANGE ACT.

July 25, 1988

Good afternoon Mr. Chairman and members of the Committee. I am here today to discuss S. 2420, a bill "To provide for the disposition of certain lands in Arizona under the jurisdiction of the Department of the Interior by means of an exchange of lands, and for other purposes."

I would like to focus my statement on how we got to where we are in the process leading to the closure of the Phoenix Indian School and our concerns regarding the students and staff.

The Phoenix Indian School has been serving Indian students since 1891. Although the majority of students have been from Arizona and New Mexico, the off-reservation boarding school has also served Indian students from other tribes.

In recent years the Bureau's policy to educate students as close to home as possible resulted in the building of several reservation day schools. As children were able to attend schools close to home, enrollment in the boarding schools declined dramatically.

Serious discussion regarding the possible closure of Phoenix Indian School by the Bureau of Indian Affairs began with Congressional direction.

The Senate and Conference Committees' reports on the FY 1984 appropriations for the Bureau of Indian Affairs, indicated that upon completion of the Hopi High School the Phoenix Indian School should be closed. In 1986 Hopi High School opened and in 1987 a high school on the Tohono O'odham reservation opened. These new schools had a significant impact on the already declining enrollment at Phoenix Indian School.

In the FY 1987 Interior Appropriations Act (P.L. 99-500) the Bureau was directed to do a study on the needs of the students at Phoenix Indian school and to provide recommendations for the establishment of special programs to meet those needs. This study was to be conducted before initiating any action to close the school or dispose of the property.

The Bureau conducted the study in 1986 and recommended that the Phoenix Indian School be closed at the end of the 1987-88 school year. The report recommended that the Sherman School in Riverside, California continue operation for its students and those displaced by closure of the Phoenix facility.

However, the FY 1988 and 1989 Interior Appropriations Bills retains language prohibiting the closure of the school until specific legislation authorizing the closure has been enacted.

Because of this Congressional direction we find ourselves in a dilemma. To date, only 47 students have indicated Phoenix Indian

School as their school of choice for the 1988-1989 school year. With such a small enrollment it is not possible to maintain an academic program in grades 9-12 that meets state or regional standards for accreditation and an inter-scholastic athletic program, band or other extra-curricular activities are not possible. In addition, keeping the school open for an entire school year would cost approximately $1,300,000. This would be a poor use of limited Federal dollars.

School is scheduled to open in mid-August. Since we have a Congressional mandate to keep the school open we believe we have only grim scenarios to consider for our teachers and students.

> If S. 2424 or H.R. 5012, the most recent House bill, were to pass by the August 12, 1988 recess, we could close the school and place students and staff in alternative jobs without disrupting the academic year. This clearly is the best alternative for all parties involved - students, teachers and the Federal government.
>
> However, if a bill does not become law authorizing us to close the school we must begin an academic program in August without knowing how long it will be permitted to continue. With the small enrollment anticipated it is likely a reduction-in-force would be necessary to run a program within the funds generated through the Indian student equalization formula. Certainly, we could not operate a quality program under these circumstances.
>
> If we open school in August and a bill (such as S. 2420) passes in September or October telling us to close the school

immediately, we believe this would be extremely detrimental to both students and staff. We would have to immediately place the students in other schools. However, the staff would remain on board until we had completed the required notice and other personnel procedures. This situation would be blatantly unfair, inefficient and costly.

If we open school in August and a bill passes in the fall requiring extensive student and staff alternative placements, we could conceivably operate a program through the first academic semester. We believe this option would be preferable to an immediate open and closure situation.

A final option would be for Congress to amend the bill to allow us to close the school at the end of the next school year.

The Bureau has attempted to phase down the operation of the school in a planned manner since the Conference Report on the FY 1984 appropriations bill. However, it is now time to finally decide when to close the academic program for the benefit of the students and staff. If left to our discretion we would have closed the school at the end of the last school year and worked over the summer to find appropriate placements for students and staff.

We urge this Committee to consider the immediate needs of the students and staff, and quickly pass the bill to allow us to close the school. If a bill can't be passed by August 12 and we are required to open the school, we believe that the Congress should allow us to keep the school open until the end of the

1988-1989 school year so we can operate a continuous education program.

This concludes my statement. I would be happy to answer questions now or following Ms. Recce's statement.

STATEMENT OF SUSAN RECCE, ACTING ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE A JOINT HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE SUBCOMMITTEE ON PUBLIC LANDS AND NATIONAL FORESTS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING S. 2420, THE ARIZONA-FLORIDA LAND EXCHANGE ACT

July 25, 1988

Mr. Chairman, I am Susan Recce, Acting Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior. With me is Pat Ragsdale, Deputy Assistant Secretary for Indian Affairs. We are accompanied by William Hartwig, Chief of Realty of the Fish and Wildlife Service and Willis Kriz, Chief of the Land Resources Division of the National Park Service. We are pleased to be here today to provide the Administration's views on S. 2420, the Arizona-Florida Land Exchange Act.

We strongly support S. 2420, if amended as discussed below.

S. 2420 would ratify a land exchange agreement recently negotiated by the Department, insofar as the terms of the land transactions are concerned.

We believe this agreement represents a major accomplishment in both protecting the public interest in the Phoenix Indian School lands and acquiring the Florida lands authorized by Public Law 100-301 without direct expenditure of Federal funds.

The majority of the land exchanges conducted by the Fish and Wildlife Service or the National Park Service are done within existing authorities. This exchange, however, involving lands not under the jurisdiction of either agency, complex circumstances and conditions, and significant resource and dollar values, requires specific legislative authorization.

The Administration does strongly object to earmarking the $34.9 million to be received from Collier to equalize the values of the exchange into a trust fund for members of the Arizona Indian community, as proposed by this legislation. We believe the needs of the Arizona Indian community have already been met in large part by the expenditure of over $40 million in Federal funds to construct new on-reservation high schools in Arizona to replace the Phoenix Indian School. Any additional needs should be met through the formal appropriations process. This would allow those needs to be evaluated against all other demands for Federal funds, including the educational needs of other Indian tribes, and ensure the best use of scarce resources in the current budgetary situation.

This exchange proposal came about due to the interaction of three totally unrelated situations - the decision to close the Phoenix Indian School, the decision to complete the long-delayed conversion of Alligator Alley in Florida into Interstate Highway 75, and the growing recognition of the need to increase environmental protection of wetlands in South Florida.

Mr. Ragsdale will explain the events that led to the decision to close the Indian school, and I will then discuss the exchange itself.

In the early 1980's, there was an increasing recognition among Federal and State agencies and members of the public of the need for increased protection for the Everglades ecosystem. The Fish and Wildlife Service was in the process of conducting an Environmental Assessment for acquisition of land in Collier County for benefit of the endangered Florida panther, and the State, under the leadership of then-Governor Graham, was preparing for a major acquisition and restoration initiative known as "Save Our Everglades".

The planned conversion of Alligator Alley into the remaining link of Interstate 75 was the element that brought this specific acquisition proposal to the fore. As you will note from the map, a large tract of land immediate north and east of the existing boundary of the Big Cypress National Preserve is bounded on almost all four sides by the Preserve and the two Indian Reservations. Legal access to most of the land is obtainable only from the highway.

Whenever new highway construction blocks access to adjoining lands, the owners must receive compensation for the loss of access, termed "severance damages". Interstate highways are built as "limited access" roads, which permit access to adjoining lands only from interchanges (or via locked-gate exits for special circumstances). This particular road was designed with no interchanges serving this tract of land, and for a variety of reasons it was not considered possible to redesign it to provide access. Because of the unusual circumstances here (i.e. no other access), it became apparent almost immediately that the severance damages would constitute a significant percentage of the land's total value. In fact, the State of Florida quickly determined that the damages would probably amount to half the value of the entire tract of land.

If nothing was done, the Highway Trust Fund and the State would be paying for half of the value of the land, while receiving nothing in return. And given the government's usual experience with land acquisition, any efforts to acquire the land at a later date would result in the courts compensating the owners at the then-current fair market value rate -- without reference to the previous severance payments.

Governor Graham then proposed that the entire tract be acquired for addition to the Big Cypress National Preserve in conjunction with the highway severance process, with the State paying 20 percent of the cost of the remaining value in the land, and the Department 80 percent. This would result in acquisition at present fair market value. The other options were that either the government could pay 50 percent of the value of the land and receive nothing, and not pursue its later acquisition, which could cause significant environmental problems, as explained later in my statement, or pursue acquisition independently of the severance process.

Governor Graham set about securing support for his proposal, which included meetings with Departmental officials. We very quickly became concerned over the budgetary implications, which could have exceeded $60,000,000 in appropriated funds for our share of the purchase, and frankly did not believe we would be able to support the proposal. However, considerable time passed before legislation authorizing the purchase was introduced in Congress. Before it was scheduled to be acted upon, we were contacted by the Aerojet-General Corporation and Members of Congress from Florida about an interstate land exchange by that company.

It occurred to a number of persons that an exchange might be a means of resolving the budgetary problems associated with the Big Cypress proposal, and we began discussions with the principal landowners, the Barron Collier Corporation and Collier Enterprises. We reached agreement in principle with them in the Spring of 1986, but resolution of final details, particularly with respect to what would happen in Phoenix, was not reached until earlier this year.

Under the terms of our agreement with the Collier interests, four parcels of private land in Collier County, Florida, totaling approximately 107,800 acres, would be acquired by the United States for addition to the National Park System and the National Wildlife Refuge System, providing benefits for endangered species, other wildlife, wetlands, groundwater, drinking water supplies, and recreation.

Of the lands to be received by the United States, approximately 83,070 acres, in two parcels, would be added to the existing Big Cypress National Preserve. Approximately 5,110 acres would become part of and complete the Florida Panther National Wildlife Refuge, which has been established for the protection of the endangered Florida panther. The latter Refuge would total approximately 29,410 acres; the remaining 24,298 acres are being purchased with appropriated land acquisition funds. Approximately 15,384 acres of land area would become a new Ten Thousand Islands National Wildlife Refuge; in addition Collier, at no cost to the government, would quitclaim title to the United States to approximately 4,236 acres of land below mean high water in the Ten Thousand Islands area. These lands may be subject to an ownership claim by the State of Florida. If so, the U.S. Fish and Wildlife Service will seek a Memorandum of Agreement with Florida to ensure a conservation management regime for these lands.

Subsurface oil and gas rights underlying those same lands would be retained by Collier, pursuant to existing law governing the Big Cypress National Preserve, and its 1988 amendment, Public Law 100-301, or the laws relating to the management of the refuges, as appropriate, and subject to mutually agreed-upon, binding stipulations controlling the exploration and development of these resources. These stipulations provide essential protection for water, lands, and wildlife, including endangered species, during any exploration- or development-related activities. The stipulations are designed to protect the surface uses of the land for Preserve and refuge purposes, while recognizing the reserved property rights of the Colliers. In addition, pursuant to a provision of Public Law 100-310, the National Park Service is preparing oil and gas regulations which would supersede the agreement's stipulations as they pertain to the Big Cypress National Preserve.

In addition to the lands conveyed to the United States, Collier would make a cash equalization payment of approximately $34.9 million to the United States, representing the difference in negotiated price between the lands to be conveyed to the United States and the land to be conveyed to Collier by the United States.

In exchange for the above, Collier would receive title to approximately 68.4 acres of land in Phoenix, Arizona, which is part of an approximately 111-acre parcel owned by the United States and currently occupied by the Phoenix Indian School. The land in Phoenix, Arizona, that would be conveyed to Collier is surplus to the program needs of the United States. As directed by Congress, the Department has studied and determined the Department has determined that the Phoenix Indian School is no longer required for Indian education. Congressional authorization for closing of the school would necessarily be required in connection with ratification of the agreement.

The school is administered by the Bureau of Indian Affairs for the benefit of Indian education. Of the remaining acreage in that parcel, 6.56 acres are subject to road rights-of-way, the underlying estate to which would be transferred to the city, 20 acres would be transferred to the City of Phoenix for use as a public park, 11.5 acres would be transferred to the Veterans Administration, allowing it to expand facilities of its adjacent hospital, and 4.5 acres would be transferred to the State of Arizona for construction of a State veterans home.

The Phoenix Indian School site is no longer needed to meet the educational needs of Arizona Indians due to completion of new, more modern facilities elsewhere in the region. The area around the present school is now used primarily for commercial purposes, including offices, service industries, retail businesses, hotels, and other related uses. The school site's primary value to the United States is as an asset of significant value that could be disposed for valuable consideration.

The agreement is in the form of an offer to Collier to undertake the exchange. Collier will have three years after the enactment of the legislation to decide whether to accept the offer. This time will be utilized by Collier and the city of Phoenix to develop zoning and land use plans for the Phoenix Indian School site.

Immediately following enactment, and during the planning period, Collier will commit the land in Florida to a conservation management regime. In essence, nearly 108,000 acres will immediately become a de facto part of the National Park and National Wildlife Refuge Systems.

By authorizing the exchange agreement at this time, the Congress can provide that valuable lands in south Florida can be acquired in an economical manner, without appropriated funds, and be managed for the protection of valuable watersheds and wildlife habitat. Stipulations and regulations to ensure the protection of environmental values are incorporated as part of the contractual agreement and would apply to the exploration and development of oil and gas resources underlying the lands in Florida to be conveyed to the United States. These controls on oil and gas activities generally mirror the protections provided now in the Big Cypress Preserve and in the units of the National Wildlife Refuge System.

The lands to be exchanged, with the addition of the cash equalization payment, are approximately equal in value. The 111 acres of the Phoenix Indian School land have been appraised at $122.2 million. Through deletion of the lands for the City, the State, and the Veterans Administration, the lands to be conveyed to Collier are valued at approximately $80 million. The negotiated value of the combined Florida lands to be conveyed to the United States is approximately $45.1 million (See Table 1). The difference between the values of the Phoenix and Florida lands would be balanced by a cash equalization payment of approximately $34.9 million, to be paid by Collier to the United States.

The State of Florida is also committed to the Big Cypress project and has set aside funds for sharing some of the costs of Federal acquisition, based upon its original proposal for purchase of the areas to be added to the Big Cypress National Preserve. We will propose to the State that it fulfill its obligations by acquiring (or making the funds available to acquire) the remaining approximately $15.4 million worth of lands in the eastern townships of the Big Cypress National Preserve and donating these lands to the Department.

There are substantial public benefits accruing from the exchange. The land exchange would permit the National Park Service to acquire two parcels of land, totaling approximately 83,100 acres, including approximately 70,000 acres to the northeast ("the eastern townships") and approximately 13,100 acres to the west ("the western strip") of the existing Big Cypress National Preserve. These parcels comprise a majority of the lands designated for acquisition under Public Law 100-301, establishing the Big Cypress National Preserve Addition. Preservation of the eastern township lands is considered essential to the protection of the fragile hydrology of south Florida, including the source of drinking water for millions of residents in Dade and Broward Counties, and areas of the western strip serve as habitat for the endangered Florida panther and other threatened and endangered species.

The original acquisition of the Big Cypress National Preserve was largely for the purpose of protecting essential watersheds that supply Everglades National Park and drinking water for southern Florida. Continued conversion of wetlands to agricultural uses, subdivision activity and other development processes severely threaten these watersheds. Acquisition of the additional lands for the Preserve would help ensure the protection of these watersheds and the preservation of the habitats that provide for continued hunting, fishing and other recreational activities. Finally, problems of trespass and illegal off-road vehicle use from the western addition strip to the Preserve could be controlled by this acquisition.

Approximately 5,110 acres of the Florida land to be acquired would be added to and complete the Florida Panther National Wildlife Refuge. Much of this Refuge is already being purchased by the U.S. Fish and Wildlife Service for the benefit of the endangered Florida panther. This Refuge contains important habitat for the panther, as well as a number of other threatened and endangered species of plants and animals. As in the Preserve addition, habitat loss and other problems resulting from agricultural and development activities would be prevented by the acquisition, resulting in significant improvements in the future prospects of these species.

Another National Wildlife Refuge, totaling approximately 20,000 acres would be established in the Ten Thousand Islands area, immediately northwest of the Everglades National Park, comprised of about 15,384 acres of islands and shore, and another 4,236 acres of lands below mean high water, to be deeded from the Colliers. This area serves as a productive habitat for a wide variety of fish and wildlife species, including the endangered Florida manatee and the bald eagle, and includes large undisturbed areas of cypress and mangrove. The Ten Thousand Islands is an outstanding scenic area with extensive estuarine spaces interspersed with a great many small islands and peninsulas. It is an essential nursery area for many species of fish and shrimp that provide the basis for a major element of Florida's fishery industry, and also provides a unique and irreplaceable recreational area for boaters and campers. Development has extended southward along the Florida Gulf coast to Marco Island, which is just northwest of this area, and would very likely extend further, resulting in loss of the unique values of this area, if acquisition by the government did not occur.

We note that certain of the buildings and structures on the Phoenix Indian School land have been determined eligible for the National Register of Historic Places, although none have actually been nominated. A Memorandum of Agreement has been completed with the Advisory Council on Historic Preservation and the Arizona Historic Preservation officer that provides for appropriate studies and recordation of these sites, in order to protect the public's interest in their historic value. This approach will satisfy all of the Department's statutory obligations regarding the historic features of the property.

The land in Collier County, Florida that Collier would convey to the United States is protected under the exchange agreement in several ways pending the actual conveyance. Collier agrees not to materially change the management of its lands, or to substantially alter their physical condition.

Collier agrees to interim use and occupancy of its lands by Departmental employees for conservation purposes, including studies of fish and wildlife and other environmental resources.

In addition, Collier will at its expense, prior to conveying the land to the United States, terminate all farming, grazing, hunting and other recreational leases and uses on the land, demolish all habitable structures associated with such uses, and remove all known trespassers.

An Environmental Assessment has been prepared concerning this exchange, and a copy provided to the Committee. Each of these acquisitions has been subject to more detailed prior review, including extensive public review, under the National Environmental Policy Act, in one or more Environmental Assessments or Environmental Impact Statements for each parcel to be acquired, as well as other related environmental review documents, and previous Congressional hearings. These prior reviews are summarized and identified in the Environmental Assessment for the current proposal. The disposition of the Phoenix Indian School land has been the subject of considerable public review, and the uses to which it would be put by Collier following the exchange will be subject to further public review under the land use planning procedures of the City of Phoenix. Finally, Congress must authorize this agreement for it to become effective.

Some have questioned the land values involved in the exchange. All of the Florida lands except the northern addition to the Big Cypress National Preserve were appraised according to the standard practices of the National Park Service and the Fish and Wildlife Service. A General Accounting Office review had no criticisms of these appraisals. They were also appraised by certified appraisers retained by the Collier interests, and the values were then negotiated. As shown on the chart attached to my testimony, the agreed-upon figures are six percent higher than our appraisals and twenty-one percent lower than the appraisals conducted for the Collier interests.

Portions of the lands to be acquired for the Ten Thousand Islands Refuge (4,236 of 19,620 acres) are below the mean high tide level and may be subject to a claim by the State of Florida. Contrary to press reports, this does not represent "most" of the Refuge, any possible loss to the government, nor is it any surprise to or by any of the parties to the proposal. We recognized this possibility from the outset, and explained the situation in a House hearing last summer.

These lands were given absolutely no value in our appraisals. They will be transferred to the United States by quitclaim deed for $2

($1 to each company). This removes Collier's claim to the land (on which they have been paying taxes for many years). If any claim is made by the State, we will work with them, through cooperative agreement or otherwise, to ensure a conservation management regime for the area. The State is also aware of the situation, and has supported the exchange proposal. We do not anticipate any problems in this regard, and the General Accounting Office had no criticism of our appraisal of this tract.

The northern addition to the Preserve was not subject to appraisal by the National Park Service because its value was already slated to be determined by the condemnation process associated with the conversion of Alligator Alley into Interstate 75, and we saw no reason not to utilize that determination. The Department instead negotiated a maximum dollar value for this tract, to remain valid if the condemnation process yielded a higher amount, and the United States to receive additional land if the value was lower. The negotiated value was $26.6 million, and the value determined by the highway condemnation process was $27,898,100, representing a gain to the United States of $1,298,100. The condemnation value was approved by the State of Florida, the Federal Highway Administration, and the court. We view that as a clear determination of fair market value, and criticism of that value as pointless, given the final nature of the determination.

We accordingly believe the dollar values for these lands are excellent, and their wildlife values are unchallenged. Their acquisition at this price is clearly in the public interest.

There have been press reports containing anonymous suggestions that the lands are "worthless", and cannot be developed because they are "swampland". It is precisely their wetland nature that makes them valuable fish and wildlife habitat, and home for several endangered species. It is true that the Corps of Engineers section 404 permitting process might protect much of this land from shopping centers and highrises. However, there is ample and unquestionable evidence that existing laws do not protect most of these lands from conversion to agricultural purposes, or from construction of individual dwellings.

As is clearly discussed in our environmental assessments, runoff of pesticides, fertilizers and other agricultural chemicals, and unregulated human intrusions, represent very real, major threats to several of the endangered species and the water quality values we are seeking to protect by the proposal. The need for protection of the water quality and the resident endangered species are expressly recognized in the recently enacted Public Law 100-301 (S. 90), which authorized purchase of much of this area.

Some have also questioned the value attached to the Phoenix lands, suggesting that either the figure is too low, or that it should not even be calculated until after the City of Phoenix has rezoned the property.

The Phoenix tract has been the subject of two appraisals by the Department, conducted in the normal fashion by skilled professionals, and we strongly believe the one we approved represents accurate value for the land. There is no reason to believe another appraisal would yield a significantly different result.

The suggestions that the Federal government await decisions by the City of Phoenix for zoning of the property are completely unrealistic. The city would prefer that the land be utilized for park purposes, and city officials have made it very clear that the land is not going to be rezoned for development in a vacuum. This proposal provides for the Colliers to work with the city, in a process they have already mutually agreed upon, for a development and zoning package that meets the city's concerns. Absent such specific input, the city will simply not act to rezone the land.

We believe we have addressed the concern that the zoning decisions might significantly increase the value of the Phoenix land by the provisions in the contract which allow any interested party that has sufficient financial resources, and agrees to abide by the city's zoning decision, to make a higher offer for the land once the zoning is completed. Collier may then either match this offer or withdraw, in which case the Phoenix land would be sold to the higher bidder. A portion of the funds would be utilized to purchase the Collier lands covered by the exchange proposal at the currently-agreed price. We are putting the land to the only reliable test of value - the marketplace; the government will receive a fair price for the land regardless of the outcome.

We must also keep in mind that any effort by the government to pressure or outwait the city on that issue would lose the environmental and outlay benefits of the exchange proposal. We would be faced instead with pressures for massive outlays of appropriated funds to purchase the Florida lands. Budgetary realities would result in our attempting to acquire these lands over a considerable period of time, with only a few million dollars likely to be made available through the appropriations process each year. In the face of rapidly rising land values in South Florida, this would result in large additional expenditures of scarce taxpayer dollars. It would also be questionable as to whether the lands would remain available in a desirable condition for any length of time, or whether they would instead be converted to agricultural purposes or subdivided, with major adverse environmental consequences.

Such an approach would transform the current "win-win" proposal into a losing proposition for all parties.

We commend the Committees' willingness to act so rapidly on the implementing legislation, and we urge enactment with the amendment we have suggested.

This concludes my prepared statement. I would be happy to answer any questions you may have.

TABLE I

APPRAISED VALUES OF FLORIDA LANDS INCLUDED IN COLLIER/DEPARTMENT OF INTERIOR LAND EXCHANGE

	Acres	Appraised Value (1) Collier	Appraised Value (1) DOI	Negotiated Value (1)	% under Collier Appraisal	% over DOI Appraisal
Florida Panther NWR	5,110	$ 3.97	$ 1.76	$ 2.1	(47.11%)	19.63%
Big Cypress Preserve (East twnshps)	70,010	26.6(2)	26.6(2)	26.6(3)	(4)	(4)
Big Cypress Preserve (Rt. 29)	13,060	13.2	8.125	10.6	(19.70)	30.46
Ten Thousand Islands	19,620	12.4	4.5(5)	5.8	(53.23)	28.89
TOTALS	107,800	$56.2	$42.28	$45.1	(20.91%)	6.25%

NOTES:

(1) All values are expressed in millions of dollars

(2) Agreed-to values prior to Federal Highway Administration/Florida DOT condemnation proceedings for severance damages from I-75 construction

(3) Actual values stipulated in subsequent condemnation proceedings were:

Total value	$56,484,600
Severance damages	28,586,500
Remainder value	$27,898,100

"Severance damages" = loss of value from lack of access to the land after construction of the highway, as determined in court by condemnation action

"Remainder value" = value of the land after loss of access (severance) is determined; DOI is acquiring the remainder value of these lands

(4) The value of the land to be acquired is $1,298,100 (5%) more than the negotiated value, with the benefit being to the United States

(5) includes 4,236 acres below mean high tide line, disputed between Collier and the State of Florida, given no value by DOI; to be transferred to the United States by quitclaim deed.

STATEMENT OF ROY E. CAWLEY, JR.
PRESIDENT, REAL ESTATE DIVISION
BARRON COLLIER COMPANY

ON S.2420,
THE ARIZONA-FLORIDA LAND EXCHANGE ACT OF 1988

BEFORE THE COMMITTEES ON
ENERGY AND NATURAL RESOURCES
AND INDIAN AFFAIRS OF
THE UNITED STATES SENATE

WASHINGTON, D. C.

JULY 25, 1988

Mr. Chairman, and members of the Committees, I appreciate the opportunity to appear before you today to urge your support for S. 2420, the Arizona-Florida Land Exchange Act of 1988. My name is Roy E. Cawley, Jr. I am President of the Real Estate Division of the Barron Collier Company. Barron Collier Company is one of two Florida partnerships which manage the assets of the Collier family of Naples, Florida. These assets include extensive land holdings in Collier County, one of the fastest growing areas of southern Florida.

Collier's currently undeveloped landholdings have the potential for a variety of economically productive uses, ranging from citrus agricultural development to commercial and recreational real estate development. Notwithstanding this economic potential, however, these lands have also been identified as critically important to the purposes of environmental conservation. As you have heard from others today, the waterflow across these lands feeds the Florida Everglades which, in turn, secures the water supply for all of south Florida. In addition, the Florida lands are host to a variety of endangered and threatened plant and animal species, some of which (the Florida Panther, for example) are uniquely indigenous to south Florida.

As a major landowner in the area, the Collier family has long been a cooperative partner in federal and state efforts to protect the Everglades ecosystem. We have always zealously protected our reputation for undertaking development activities that comport with the highest standards of environmental protection. Over the years, when the state or federal government has concluded that the interests of conservation are best served by protective governmental ownership of environmentally sensitive lands, we have attempted to accommodate that goal as well. Much of the land now in conservation units in Collier County, including the Everglades National Park and the Big Cypress National Preserve, was sold or donated by the Collier family.

Today. a large portion of Collier's landholdings is the object of intensifying and legitimate demand for public ownership. In 1984, the leaders and supporters of the Save Our Everglades movement called for an ambitious conservation program for south Florida. This effort envisioned state and federal cooperation in the conversion of Alligator Alley into an environmentally sound interstate highway and the coincident federal acquisition of 146,000 acres of surface lands in the area of the new highway and State Road 29 as an Addition to the Big Cypress National Preserve. Eighty-three thousand acres of lands within this Addition are currently owned by the Collier family.

In response to unanimous bi-partisan support of the Florida Congressional delegation, and the strong advocacy of national and Florida environmental groups, federal legislation was enacted earlier this year which establishes and authorizes the acquisition of the Big Cypress National Preserve Addition (Pub. L. 100-301). The United States Fish and Wildlife Service also intends to acquire approximately 50,000 additional acres of Collier lands in the Fakahatchee Strand and in the Ten Thousand Islands areas, to create two new wildlife refuges.

Collier supports both the general objectives of environmental conservation in southwest Florida and the specific land acquisition policies advanced through the establishment of the Big Cypress National Preserve Addition, the Florida Panther National Wildlife Refuge and the Ten Thousand Islands National Wildlife Refuge. However, we also recognize that even without our full cooperation our lands will continue to be the object of intense pressure for public acquisition. In effect, the land exchange proposal before you began as an attempt to grapple with that inevitability, by bringing land designated for acquisition into federal ownership in a fair and expeditious manner.

HISTORY OF THE LAND EXCHANGE

The Arizona-Florida land exchange was originally conceived in discussions between Collier and the Department of the Interior (DOI) as a way to accomplish an important, but relatively narrow purpose -- to permit the United States to acquire these uniquely valuable Florida lands without the use of appropriated funds. However, very soon after our initial discussions with DOI, the special value of the Phoenix lands proposed for exchange also became apparent. Although the Phoenix Indian School site is a federal asset, the property is clearly of special signficance to the citizens of Phoenix and the Arizona Indian community.

Decisions regarding the disposition and future use of the property are of legitimate concern to the Indian and non-Indian citizens of Phoenix and the State of Arizona.

Initial public discussion of the exchange proposal prompted a host of claims from the City of Phoenix, the United States Veterans Administration, and the Arizona Indian community for participation in the future use of the property and in the proceeds of its eventual disposition. Representatives of Arizona Indian Tribes, City officials, and Arizona Congressional leaders made very clear to us that the land exchange proposal could not be approved unless it were structured to provide significant public benefits to all those in Arizona affected by the closing of the school and the future development of the property. Given this legitimate, and sometimes competing, array of interests, it was not surprising that many were skeptical that an exchange could be structured which fairly accommodates these divergent claims.

Skeptics were correct to conclude that it would not be simple. As is obvious from the complexity of the transaction proposed in S. 2420, the proposal before you today is much more intricate, and accomplishes a far broader range of purposes, than the core concept of the land exchange that we discussed with the Department of the Interior in 1985. The current proposal is the product of two and one-half years of discussions, appraisals, negotiations, a competing offer, and very public debate. Its development has required an almost bewildering level of effort by the Arizona congressional delegation, officials and citizens of Phoenix and the State of Arizona, Arizona Indian Tribes, three bureaus of the Interior Department, the United States Veterans Administration, officials of the State of Florida, Members of the Florida congressional delegation, and the national and Florida environmental communities. The proposal, at various stages of development, has been the subject of three Congressional hearings, and has now been before seven different Congressional Committees.

We very much appreciate the time and energies that so many people have devoted to shaping the initial proposal into one that accomplishes a number of important public benefits and, we believe, is fair to all concerned. I hope that after today you will share our view that, finally, all the pieces are in proper place, and lend your support to enactment of this legislation.

ESSENTIAL ELEMENTS OF THE LAND EXCHANGE AGREEMENT AND THE RATIFYING LEGISLATION

I have submitted for the record a copy of the Land Exchange Agreement, and related appendices, negotiated between Collier and the Department of the Interior and executed by the parties in May of this year. This agreement sets out the structure and legal requirements governing the transaction and deals largely with issues affecting the conveyance of the Florida lands. The provisions affecting the disposition of the Arizona property are dealt with largely in the ratifying legislation, which modifies the Collier-DOI agreement in several important respects. I would like in my testimony briefly to outline the exchange proposal as provided in both the agreement and the legislation, and then describe, from Collier's perspective, the considerations which led to the proposal in its current form.

S. 2420 ratifies an agreement between Collier and the United States pursuant to which the United States may acquire 108,000 acres of land in Florida, valued at $45.1 million, in exchange for which Collier would receive 68 acres of land at the current site of the Phoenix Indian High School in Phoenix, Arizona, appraised by the DOI at an average of $1.17 million per acre. Because the assumed value of the Phoenix property to be conveyed to Collier (a total of $80 million, based on the DOI appraisal) exceeds the value of the Florida lands by $34.9 million, Collier would be required under the exchange agreement to pay the difference to the United States in cash. Under S. 2420, this money would be deposited in United States Treasury accounts to create trust funds for the benefit of Arizona Indian Tribes served by the School.

The exchange agreement is structured as an offer by the United States to Collier to undertake the land exchange transaction by accepting that offer at some point within the three years following the date of enactment of this legislation. Under the exchange agreement, if Collier were to accept the offer, Collier would convey the Florida lands to the United States, pay the $34.9 million cash equalization payment, and in return receive title to 68 acres of the Phoenix Indian School Property.

At the same time, acreage within the School Property would also be conveyed to the Veterans Administration and the City of Phoenix. The City would receive 20 acres of land for use as a park, and the Veterans Adminstration would receive 11.5 acres of land located adjacent to its existing property for expansion of its present facilities. An additional 4.5 acres of land, also adjacent to the existing VA property, would also be transferred to the Veterans Administration for possible future conveyance to the State of Arizona as a home for veterans.

The ratifying legislation generally retains this framework for the exchange transaction, but does modify it in certain signficant respects. Most important among these changes is a provision added by the House Interior Committee which requires that the property be put up for competitive bid prior to closing on the transaction, when information on the outcome of the zoning process is available.

Under the Interior Committee amendment, third parties would be given an opportunity to submit bids to buy the 68 acres of the Phoenix property for cash at a price higher than the $80 million value agreed upon between Collier and DOI. The Secretary would be required to convey the property to the highest bidder, subject to a right of first refusal which would permit Collier to match that bid. If Collier matches that bid, Collier would convey the Florida lands, and make a cash equalization payment equal to the difference between the value of the Florida lands and the amount of the highest competitive bid. If Collier chooses not to match the higher bid, the United States would accept the highest cash offer, purchase the Collier lands for $45.1 milllion, reimburse Collier for its costs incurred in zoning the property, and place the remainder -- some amount higher than $34.9 million -- in the Indian Trust funds.

That, in very broad terms, is the proposal that is now before you. I would now like to take a few minutes to explain how we got there.

THE FLORIDA LANDS

We are confident that the enactment of the Big Cypress National Preserve Addition Act, and the views of others expressed here today, have resolved any questions concerning the benefits of acquiring the Florida lands. As far as we are aware, the acquisition of these lands is of the highest national priority to Congressional leaders and members of the conservation community.

In the course of House consideration, some questions have been raised concerning the value of the Florida lands. In an effort to respond specifically to these questions, I have attached an appendix which is a summary of the process by which these values were established. I would welcome any questions the

Committee may have concerning these matters. While I will not repeat here the matters described more fully in that appendix, I do want to emphasize several general points that may help to dispel any persistent confusion about the validity of the Florida values.

First, the values negotiated between the Colliers and the DOI were established on the basis of independent appraisals commissioned by both parties, as is typically the case in Federal land acquisition transactions. These appraisals assign value to the property based strictly on economic considerations and do not attempt to account for the special environmental value of the land. Because there have been a large number of transactions involving comparable lands in the area, appraisals performed for both sides had a great deal of verifiable market data upon which to rely in establishing these values.

Overall, the negotiated value of the Florida lands (including the Big Cypress lands which were appraised by the State of Florida) was approximately 20 percent below the Collier-appraised value and 6 percent above the DOI-appraised value. These values are based on 1987 dollars and, although they may not be acquired until 1991, no provision has been made to compensate Collier for inflation or appreciation that is likely to occur during that period. We believe that the experience of the National Park Service (NPS) in acquiring land in the Big Cypress and elsewhere demonstrates that if the United States were to attempt to acquire the lands on a piecemeal basis over a period of future years, by condemnation rather than by this transaction, the price tag could well be much higher. We would certainly not be prepared to part with these lands for anything less. We welcome your scrutiny of this transaction and believe that you will share the view of the parties to the transaction, and of your colleagues who have sponsored this legislation, that the exchange assures that the United States is receiving full and fair value in the Florida lands.

The second major issue affecting the Florida lands concerns their interim management during the period prior to their conveyance. In that regard, the DOI has insisted and Collier has agreed to a number of provisions in the exchange agreement that provide for maintenance of the land in their current condition, and which limit any change in use of the lands that is inconsistent with their eventual inclusion in the National Park and Wildlife Refuge Systems. In addition, Collier has agreed to allow the NPS and FWS access to these lands during this interim period to ensure that the United States may protect its future interests in these lands and the important fish and wildlife resources and habitat located there.

Under the terms of the exchange agreement, Collier would retain its interest in the oil and gas that may be located beneath the Florida lands. The retention of these oil and gas rights is consistent with the direction of the Congress in both the original Big Cypress legislation enacted in 1974 and the recently passed Big Cypress National Preserve Addition Act. In enacting those statutes, the Congress determined that the environmental values of the Big Cypress area could be adequately protected while allowing oil and gas exploration and development to proceed on these lands. The Congress also recognized the extraordinary costs that would be associated with federal acquisition of these oil and gas rights. Thus, the exchange, consistent with these Congressional determinations, contemplates the acquisition of the entire fee estate in these lands, less the oil and gas rights.

With respect to its retained oil and gas interests, Collier has agreed to a complex set of detailed environmental stipulations which govern the exercise of Collier's private mineral rights to oil and gas located beneath the Florida lands. These stipulations represent a significant addition to Park Service regulatory authority. Currently, the NPS is without authority to regulate the exercise of private oil and gas rights, unless the reserves are located beneath federally-owned lands. If the exchange agreement is ratified, Collier will agree as a contractual matter to submit to NPS permitting for its oil and gas activities beneath the surface of the lands that the United States will acquire in the exchange.

A final issue that has been raised with respect to the Florida lands is the ownership status of a portion of the Ten

Thousand Islands parcel which is to be conveyed by Collier to the United States under the exchange agreement. Of the 19,620 acres owned by Collier in the Ten Thousand Islands area, 4,236 acres are below the mean high water mark. In the negotiation of the exchange agreement, the parties recognized that the State of Florida may have a claim, as yet unasserted, to these submerged lands. In view of this claim, the FWS ascribed no value to these submerged lands and gave value only to the 15,000 acres of uplands in that area. At the same time, the FWS recognized that if the State's claim does not prove valid, FWS acquisition of the uplands would produce the anomalous result that the uplands and onshore areas would be owned by the FWS and the intervening submerged lands would be owned by Collier. Collier therefore agreed to convey these submerged lands to the United States by quitclaim deed. Since no value was assigned to these submerged lands, Collier is, in essence, donating these lands to the United States. The remaining 104,000 acres of lands, including the 15,000 acres of uplands in the Ten Thousand Islands, would be conveyed to the United States by warranty deed in which Collier warrants its good title to these lands.

ISSUES AFFECTING ARIZONA TRIBES

The parties to this Agreement have been well aware that the exchange is contigent upon a Congressional decision to close the Phoenix Indian school. We also understand that this decision will be made only when Congress concludes that the educational and social functions historically served by the school are better met through other facilities and programs. We have no basis for offering any opinion on the merits of that decision.

We are of course aware that the House Interior Committee, in cooperation with the House Education and Labor Committee, has reviewed the current circumstances of the school and the educational requirements of Arizona Indian children and has concluded that the educational needs of the students being served by the school can be met more effectively through transition to other facilities and programs. The Interior Committee's report on this legislation makes clear that the establishment of the trust funds through the land exchange is essential to that transition, and provides a means for ensuring that disposition of the school property will produce tangible benefits to Arizona Indian Tribes.

THE CITY OF PHOENIX

As many Members of this Committee are aware, the land exchange proposal was initially received by Phoenix citizens and officials with considerable hesitation and, in some instances, strong opposition. From the beginning of our discussions, the City's objectives were made clear. Given the size and significance of this property, the City wanted assurance that the process for planning the future development of the Phoenix Indian School property would be a truly public one, involving substantial possible public participation. Moreover, City officials and citizens of Phoenix made it clear that, whatever process was agreed to, the final zoning of the property is simply not going to produce a desert Manhattan, with wall-to-wall high rises and Wall Street caverns. What the City does expect to emerge from this process is an innovative, carefully conceived mixed use development, with a substantial share of publicly accessible open space -- a varied residential, commercial and recreational gathering place in the midst of one of the Nation's most rapidly growing cities.

The initial step toward meeting the City's purposes was the development of an agreement between Collier and the City of Phoenix which creates a novel public planning process that will govern our efforts to plan and develop the property. Under this agreement a planning group which includes City officials and citizens will participate in the selection of planners, the review and selection of designs and other aspects of planning that ordinarily are within the exclusive control of the developer. Collier generally shares the City's view as to the objectives to be accomplished in the planning process. And, as a practical matter, we have always predicated our analyses of the property based on the expectation that the rezoning process would require a high level of public participation, and would produce a mixed use development plan.

Collier has substantial experience in real estate development in Florida, where a heightened level of public attention has produced complicated zoning procedures, and unusually open local zoning processes. However, I do not believe that there exists in Florida, or anywhere, a process that compares to the Phoenix process in the scope of direct public participation that will occur in all aspects of planning and zoning the property.

The objective of the City to maximize publicly accessible open space is accomplished in several ways. First, if the agreement is ratified and the exchange or sale of the property goes forward, the City will receive title to 20 acres of land (almost 20 percent of the developable acreage at the site) for park and recreation purposes. Second, Collier has granted a right to the City under the planning agreement to sell additional acreage to the City at its costs prior to development. And, the legislation provides the City with a further opportunity to acquire additional acreage at a discounted price, in the event that the State of Arizona determines not to proceed with the use of 4.5 acres of land allocated at the site for possible construction of a State maintained nursing home.

Obviously, as developers of the property, it will also be our objective in the planning process to ensure that the zoning produces the highest potential economic value, consistent with the development objectives described above. However, we believe that the planning process can accommodate that purpose as well, without compromising the unique planning objectives set forth in the planning agreement. We look forward to a cooperative relationship with the City in accomplishing that result.

THE VETERANS ADMINISTRATION

S. 2420, and the companion House measure both provide that 11.5 acres of land within the school property will be transferred to the Veterans Administration for eventual expansion of their facilities at the Phoenix VA Hospital Center, which is adjacent to the current school site. The House Veterans Affairs Committee has endorsed certain amendments to the original House bill respecting the transfer of this land to the VA. We are very pleased that these amendments retain provisions that permit the Veterans Administration to participate in the planning and zoning process, so that plans for development of the property can be undertaken with cognizance of the VA's planned use of their property. We believe that this cooperation can only enhance the ultimate value and attractiveness of the development, and permit us to plan our uses of the property in a way that complements the uses proposed by the VA.

THE STATE OF ARIZONA

The House Veterans Affairs Committee has also proposed amendments, which we understand are supported by all sponsors of the legislation, that would permit the State of Arizona to aquire 4.5 acres of land within the school property for possible use as a nursing home for veterans. The configuration would be determined in the public planning process, a provision which we believe is critical to our ability to devise a plan that is economically productive, is consistent with neighboring uses, and accommodates the city's open space requirements. We very much appreciate the effort of the House sponsors and the Veterans Affairs Committee to work out the details of this mutually acceptable proposal.

THE PUBLIC BIDDING PROCESS

The land exchange agreement between Collier and the DOI is predicated on an appraised value for the Phoenix property of $122 million for the total developable parcel of 104 acres. The value was established by an appraisal contracted for by the FWS and presented to Collier as the approved value for the Phoenix property. We were given an opportunity to review that appraisal, after it was approved and, quite frankly, we concluded that a number of questionable assumptions in the appraisal combined to yield too high an estimated value for the property. For example, the appraisal made fairly grand assumptions about the rate at which the Phoenix market is likely to absorb additional floor space in coming years. Our view of absorption rates for Phoenix in that area is considerably more conservative. While these matters are difficult to predict, I think it is important to note that in the time that has passed since the appraisal was performed, the market for high density office space has slowed significantly. Notwithstanding our substantive differences of opinion, the DOI was adamant in its refusal to negotiate a lower value, and we have therefore proceeded, although somewhat reluctantly, on that basis.

As discussions on the land exchange proposal proceeded, it became apparent that the entire developable parcel covered in the appraisal would not be conveyed to Collier in the exchange transaction, and that nearly a third of the property would be conveyed to the City and the Veterans Administration. Eventually, an additional 4.5 acres was allocated to the State of Arizona. The configuration of acreage to be allocated to the State and to the City is to be determined in the public planning process. As a consequence, we did not know, as we were structuring the transaction, which acres would actually be conveyed to the developer and which to other parties. For that reason we assigned a per acre average value of $1.17 million per acre, based on the $122 million overall appraisal, and proceeded on that basis. Obviously, we will not know until the zoning is complete the specific value of the parcels allocated to the City and the State, nor will we know the effect of these allocations on the remainder of the property. The eventual configuration of these properties may either increase or decrease the value of the remainder, depending upon their location. We do know that the allocation made to the VA, which is not subject to the planning process, includes extremely valuable road frontage property adjacent to existing rights of way. The effect of this allocation is to reduce the potential value of the remainder of the property.

I should emphasize that the assumptions required to be made and the risks required to be assumed by the parties to the Exchange Agreement are not uncommon in transactions involving land such as the Phoenix property, where zoning decisions have yet to be made. Appraisals are no more than expert guesses as to the price that a willing seller would extract and a willing buyer would pay in an arms length transaction. The actual test of value is, of course, the price actually paid for the property in the market. The Phoenix property does not have zoning that currently supports the $80 million price tag. Unlike the Florida lands, where the appraised values can rely on comparable sales data for establishing this estimate, there really is nothing comparable in Phoenix to serve as a basis for these appraisals.

As a consequence, the parties have to rely upon appraisals as guiding tools and negotiate in good faith, based on all available data, information, and their respective business judgments as to the likely outcome of the zoning process and the ability of the Phoenix real estate market to sustain the development permitted under that zoning. I believe that we and the Department of the Interior did just that, and proposed to the Congress a transaction based on a reasonable potential value for the Phoenix property.

In the course of its review of the proposal, the Arizona Congressional delegation asked the General Accounting Office (GAO) to review the appraisals underlying the transaction. In its report the GAO identified certain concerns with the valuation of the Phoenix property. GAO recognized properly that the value of the property is ultimately dependent upon the rezoning that the City approves, and that some speculation as to the likely outcome of that process is required in order to assign a value at this date. GAO concluded that if the City permits much higher densities than are contemplated in the DOI appraisal, the value of the property could be much higher.

If the City of Phoenix does provide for more intense zoning than anyone now expects, and if the Phoenix market could actually absorb that much additional floor space, GAO would be correct. The opposite is also obviously true; if the zoning is more restrictive, the value of the property will be less. We believe that, given the clear objectives of the City and the location of the VA property, the latter is the more likely outcome. The Arizona delegation and the House Interior Committee shared the GAO's concern with assuring the United States maximum value for its property, and, accordingly, added a significant amendment to H.R. 4519 which addresses this concern. This amendment would place the property up for competitive bid in the manner described earlier in my testimony.

If the outcome of the zoning process proves to be more generous toward development, and the Phoenix market justifies it, another bidder will tell you that, by offering a higher price. If such a bid is offered, and we share the bidder's view that the property has greater economic potential than we currently expect, we will match that bid. If our view of the Phoenix market and the zoning is different (and developers often disagree on these matters), we would not match the offer. In that event, the legislation would use a portion of the cash proceeds of the sale of the property to buy the Florida lands. In addition, in the event we do not match the offer, we would be compensated for our costs incurred in the zoning process from the cash paid by the competing bidder. I should emphasize that if we ultimately acquire the property we would not be reimbursed for our costs. If we do not acquire the property, it is entirely reasonable that the planning costs be transferred to the developer who actually does acquire the property by this reimbursement mechanism.

Under this bidding system the property will go into private hands only after the selling price has been validated through a competitive bidding process that assures the United States of the highest price for its property. Such a market test is obviously the only real test of value, and I do not believe that any amount of appraisals, survey, studies or experts will provide you greater confidence that the property is being sold at its full value.

As stated above, we believe that the risks of the Phoenix transaction were fairly allocated under the exchange agreement, and that the value assumptions are quite reasonable from a seller's perspective. Nevertheless, we understand that the Congress, in disposing of a valuable federal asset, is entitled to maximum assurance that the full value of that asset is received. We are therefore comfortable with the bidding process as a means of providing that additional assurance.

A number of questions about the Phoenix values and the bidding process have been raised that I would also like to address. There has been some concern expressed that the bidding system is structured in a way that might discourage potential competing bidders. It is difficult for me to imagine how this would be the case. To the contrary, I think that this process is unusually likely to attract bidders because of the uniquely public nature of the public planning process. During this planning process all of the engineering and planning documents, designs and other related information will be publicly available to anyone over the course of the planning process. Ordinarily this information is proprietary until a final plan is laid before the City for approval. Preparing a bid on the basis of this information, by comparison to what would otherwise be required for a parcel of this size and character, will be a relatively simple task.

In addition, questions have been raised about whether the thirty-day bidding period under S. 2420 affords an ample period of time for a competitive bid to be developed. In answering this question, it is again important to understand how the bidding system will work in the context of the planning process. The national real estate community is well aware of this transaction. I am confident that if this legislation is passed, any number of developers will begin to monitor the planning process and will understand, prior to formulating a bid, the full details of the zoning requirements adopted for the property. Spared the risk and time of developing this information themselves, bidders will simply test the specific development plan for the property against their own economic assumptions and on that basis will decide whether or not to submit a bid.

I believe that as a practical matter the bidding process in its current form is more than adequate to solicit a number of fair bids, if the zoning justifies it. However, I understand that to provide an extra measure of confidence in the process, the substitute bill likely to be offered for consideration on the House floor would expand the Federal Register notice period to 90 days.

In addition, there is provision in the House substitute that prohibits us from triggering the bidding process until the later of one year from the date of enactment or the filing of the specific plan for development of the property. The combined effect of this provision and the extension of the Federal Register Notice period is to compress our decision period into a very short period of time. Collier does understand the objectives sought to be accomplished through these modifications, and we do not object to their inclusion in the bill. We believe that these changes are not fatal to the workability of the proposal, although I must emphasize that they represent the minimum conditions under which we can successfully proceed through the zoning process.

CONCLUSION

I hope that the foregoing comments are useful to the Committees' consideration of this proposal. I know that there are many aspects of the proposal not fully addressed and I would be pleased to answer any questions you may have. I again want to thank the sponsors of the legislation and the many others who have lent their time and effort over the last two and one-half years to this process. I am hopeful that you, the Members of these Committees, will join your colleagues in support of this measure and provide for its expeditious enactment. Thank you.

APPENDIX

July 25, 1988

DETERMINATION OF FLORIDA LAND VALUES FOR THE ARIZONA-FLORIDA LAND EXCHANGE

H.R. 4519 and S. 2420 would authorize the Department of the Interior (DOI) to exchange a portion of the land at the current site of the Bureau of Indian Affairs Boarding School in Phoenix, Arizona for various lands in Florida that would be added to the National Park System and the National Wildlife Refuge System in southwestern Florida. The following briefly summarizes the values ascribed to the Florida lands to be exchanged, and the process by which those values were determined.

Under the terms of the Exchange Agreement between the United States and Collier (the current owner of the Florida lands), the United States would acquire 107,799 acres of land with a total value of $45.1 million. In exchange, Collier would receive 68.41 acres of land at the Phoenix Indian School site, worth $80.0 million. Collier would pay the difference in value in the form of a cash equalization payment of $34.9 million. Under the legislation, this money would be used to establish education trust funds for the benefit of Arizona Indian children.

FLORIDA LANDS

The acquisition includes the following discrete parcels of land in Florida:

	Unit	Acres	Values ($ Millions)
1.	Florida Panther National Wildlife Refuge	5,109	$ 2.1
2.	Ten Thousand Islands National Wildlife Refuge (uplands)	15,384	5.8
3.	Ten Thousand Islands National Wildlife Refuge (submerged)	4,326	0.0

4.	Big Cypress National Preserve (S.R. 29)	13,060	10.6
5.	Big Cypress National Preserve (Eastern Townships)	70,010	26.6
	Total	107,799	$45.1

THE VALUATION PROCESS

As is typically the case in federal land acquisition transactions, the values ascribed to these parcels were derived through a process of negotiation, based upon independent real estate appraisals. In performing the independent appraisals, professional appraisers reviewed the property to be acquired by the United States and identified its highest and best use. Analyses of sales of comparable property in the area were made, and, on that basis, the appraisers offered their professional judgments as to the price that a willing buyer would pay and a willing seller would accept for the land to be acquired.

In the case of all of the Florida lands, a substantial number of comparable sales were available to appraisers to serve as a basis for assessing value. The appraisals relied upon by both the United States and Collier were based on such comparable sales and, accordingly, show the appraiser's view of the economic or real estate value of the property. These lands have unique environmental qualities that could increase their value when acquired for purposes of environmental conservation. However, none of the appraisers attempted to account for these unique public interest values in estimating the value of the lands to be acquired by the United States. Similarly, the final negotiated values do not reflect any premium for such environmental values, and reflect only differences in comparable sales data and similar factors associated with the economic value of the land. The overall negotiated value represents an increase of 6.25% over the appraisal values relied upon by the DOI and 20.91% below the appraisal values relied upon by Collier.

VALUATION OF DISCRETE PARCELS

- Florida Panther National Wildlife Refuge.

The United States Fish & Wildlife Service (FWS) has designated approximately 30,000 acres of land in the Fakahatchee Strand area north of State Road 84 (Alligator Alley) as the

Florida Panther National Wildlife Refuge. All of the lands within the boundaries of the Refuge are owned by Collier. The Congress has appropriated funds in FY 85-88 for acquisition of these lands. The amount currently remaining in the Florida Panther Refuge account is $11.0 million.

Pursuant to standard FWS land acquisition procedures, the FWS performed an appraisal of the entire tract to be acquired from a single seller. In this case, because Collier owns all the land within the Refuge boundaries, the FWS appraised the entire 30,000-acre tract.

The DOI appraisal showed a value of $10.7 million for the entire tract. The parties negotiated a value of $12.7 million for the entire 30,000 acres, which reflects an average price of $418.0 per acre, and agreed that this price would govern both the Exchange and any purchases of other Collier lands necessary to complete the Refuge.

Under the original Land Exchange proposal, Collier and DOI divided the Florida Panther Refuge lands into two comparable parcels and agreed that approximately one-half of the Florida Panther Refuge Lands (15,293 acres) would be included in the Land Exchange and one-half would be purchased by the FWS with funds previously appropriated by Congress for that purpose. On this basis, as originally proposed, the Land Exchange included 15,293 acres of Florida Panther Refuge Lands, worth $6.4 million.

Subsequently, in order to increase the cash component required to be paid by Collier under the proposed Land Exchange (thereby increasing the amount of cash available to establish the Indian trust funds), the final Exchange Agreement reduces the number of acres of Florida Panther Lands to 5,109, reflecting a total value of $2.1 million. The parties have agreed that the remaining 10,000 acres of Collier lands within the boundaries of the Refuge will be acquired by the FWS at the same per acre value by purchase with funds already appropriated and available in the Florida Panther Refuge account.

- Ten Thousand Islands National Wildlife Refuge.

The Ten Thousand Islands National Wildlife Refuge area contains 19,620 acres of land in and around a stretch of islands extending from the northwestern boundary of the Everglades National Park toward the Marco Island development south of Naples. In the early part of the century, Collier had been deeded title by the State of Florida to all 19,620 acres of land in the area. However, a recent Florida Supreme Court decision has called into question the authority of the State to deed title to submerged lands. As a consequence of this decision, the 4,236 acres of submerged land within the Refuge are subject to an unasserted claim of title by the State of Florida.

When the FWS conducted its appraisal of the Ten Thousand Islands, it assumed that Collier did not have title to the submerged lands in the area and established a value only for the 15,384 acres of Collier land above the mean high water line. The FWS value for Collier-owned uplands in the area was $4.5 million. The Collier appraisal of the area showed a value of $12.4 million. This discrepancy is attributable in small part to Collier's view that it holds good title to the submerged lands in and around the uplands; to a larger extent, the difference in value was attributable to a difference in the appraisers' professional judgments as to appropriate comparable sales and the value to be ascribed to onshore road frontage property abutting and with access to State Road 41 (the Tamiami Trail).

The negotiated value to be attributed to the Ten Thousand Islands area is $5.8 million. This negotiated value reflects an accounting for differences in comparable sales data. Because of the unasserted claim of title to the 4,236 acres of submerged lands, DOI refused to ascribe any value to the submerged acreage. Nevertheless, because there remains the possibility that Collier does have title to the submerged lands around the Ten Thousand Islands, the DOI has requested and Collier has agreed that when Collier conveys the uplands to the United States under the Exchange Agreement, it will also transfer, without cost to the United States, whatever valid claims of title it may have to the submerged lands surrounding the Ten Thousand Islands.

The conveyance of the 4,236 acres of submerged land will occur by quitclaim deed, which conveys whatever right, title and interest Collier holds in that acreage. However, Collier receives no value for the quitclaimed lands. The remaining 15,384 acres of lands in this area (as well as the other 88,000 acres of land to be conveyed to the United States under the Exchange) will be conveyed by warranty deed. These deeds meet standard Department of Justice requirements for guaranteeing Collier's ability to convey good title to the Florida land.

- Big Cypress National Preserve (Rt. 29).

The recently enacted Big Cypress National Preserve Addition Act extends the Preserve's western boundary to add a strip of property that fronts State Road 29. Collier owns 13,060 acres in this area, all of which are to be acquired under the Land Exchange. The National Park Service conducted an appraisal of the parcel showing a total value of $8.125 million for Collier land in this area. The Collier appraisal showed a value of $13.2 million. The parties negotiated a value for purposes of the Exchange of $10.6 million.

° Big Cypress National Preserve (Eastern Townships).

The largest parcel in the Exchange consists of 70,010 acres of land within the newly-established Big Cypress National Preserve Addition. This parcel consists of land located to the north and south of Alligator Alley, a state road which is now being converted to a limited access extension of Interstate 75 under a highway improvement program cooperatively undertaken by the State of Florida and the Federal government.

This conversion program has resulted in the elimination of private access points owned by Collier along Alligator Alley, substantially reducing the value of the lands owned by Collier adjacent to the highway. Because the State did not take this land (other than a narrow strip to the south of the highway), but only severed the access, Collier was compensated only for the damage arising from the loss of access (i.e., the diminution in value to the lands remaining in Collier ownership after the existing access rights were taken by the State). The State of Florida, pursuant to standard federal and State Department of Transportation appraisal procedures, determined that the value of the remaining land still in Collier ownership is $27,898,100.

Under the Exchange Agreement, the NPS would acquire the remainder lands owned by Collier for $26.6 million. The parties had originally agreed that they would not attempt to duplicate the State's appraisal and condemnation procedures, and would rely upon the outcome of the State proceedings for purposes of determining the value of the remaining lands. Because the proceedings were not complete at the time of the early stages of negotiation between Collier and the DOI, the parties estimated a value for those lands, for purposes of negotiation, at $26.6 million.

Although the remainder value for these lands was ultimately determined by the State of Florida to be $27,898,100, the parties have agreed not to make a subsequent adjustment to reflect the higher value. As a result, the eastern township lands are valued for purposes of the Exchange Agreement at $26.6 million, which is $1.3 million less than the value for these lands established under the Florida DOT proceeding.

AGREEMENT AMONG THE UNITED STATES OF AMERICA, COLLIER ENTERPRISES, COLLIER DEVELOPMENT CORPORATION, AND BARRON COLLIER COMPANY

THIS AGREEMENT entered into this 12th day of May, 1988, is by the UNITED STATES OF AMERICA, acting through the Secretary of the Interior (hereinafter "Secretary"), COLLIER ENTERPRISES, a partnership duly organized under the laws of the State of Florida, COLLIER DEVELOPMENT CORPORATION, a corporation duly organized under the laws of the State of Florida, and BARRON COLLIER COMPANY, a partnership duly organized under the laws of the State of Florida. The Secretary, Collier Enterprises, Collier Development Corporation, and Barron Collier Company are collectively referred to as "the parties." Collier Enterprises, Collier Development Corporation, and Barron Collier Company are collectively referred to as "Collier."

WITNESSETH:

WHEREAS, the Secretary desires to acquire by exchange private lands adjacent to the Big Cypress National Preserve, which lands are currently owned by Collier, and which lands, upon acquisition, would become, and be administered as, an addition to the Big Cypress National Preserve, 16 U.S.C. § 698f; and

WHEREAS, the Secretary also desires to acquire by exchange additional private lands in southwestern Florida owned by Collier, which lands, upon acquisition, would become, and be administered as, a part of the National Wildlife Refuge System; and

WHEREAS, it is the policy of the United States to seek to protect the unique ecosystem of the Florida Everglades by providing for public ownership and management of Everglades National Park and adjacent lands containing the headwaters and wetlands of the Big Cypress watershed that feed the Everglades; and

WHEREAS, the supply and quantity of water of southwestern Florida and the protection of the outstanding natural resources of the Florida Everglades are dependent upon the preservation of natural water flow and other conditions which create and maintain the unique hydrology of the Big Cypress watershed; and

WHEREAS, the Secretary has determined that extending the boundaries of the Big Cypress National Preserve by the acquisition of certain lands owned by Collier will help to create an envelope of protection around the Everglades and Big Cypress resources and will further the purposes of fish and wildlife conservation set forth in the Fish and Wildlife Act of 1956, as amended, 16 U.S.C. § 742a, et seq., and the Endangered Species Act, as amended, 16 U.S.C. § 1531, et seq.; and

WHEREAS, the Secretary has determined that the public ownership and management of certain interests in lands owned by Collier will protect the habitat and enhance the recovery of the endangered Florida Panther, and other endangered and threatened fish, plant and wildlife species that are indigenous to the Everglades and Big Cypress areas and surrounding wetlands; and

WHEREAS, section 4(b) of the National Wildlife Refuge System Administration Act, 16 U.S.C § 668dd(b), authorizes the Secretary to acquire lands or interests therein for inclusion in the National Wildlife Refuge System by land exchanges; and

WHEREAS, the Secretary proposes to facilitate implementation of this Agreement by establishing the Florida Panther National Wildlife Refuge under the Endangered Species Act, and establishing the Ten Thousand Islands National Wildlife Refuge under the Fish and Wildlife Act of 1956 and the National Wildlife Refuge System Administration Act, both in southern Florida; and

WHEREAS, the parties recognize that some of the interests in lands to be acquired by the Secretary from Collier will be affected by the eminent domain plans of the Department of Transportation of the State of Florida which are associated with the conversion of State Road 84 to Interstate Highway 75, and that at this time such plans are certain in scope and effect on such lands (irrespective of whether such acquisition be by condemnation or by purchase in lieu of condemnation); and

WHEREAS, in pursuit of such plans, the State of Florida Department of Transportation has initiated eminent domain judicial proceedings and acquired access rights to certain of the interests in lands to be acquired by the Secretary from Collier; and

WHEREAS, the State of Florida Department of Transportation has represented that it will shortly complete the acquisition of access rights to the remainder of such interests in lands along State Road 84; and

WHEREAS, the parties intend that the Secretary shall acquire interests in the Collier lands only from those Collier lands that remain in Collier ownership upon the conclusion of all such eminent domain actions or purchases in lieu of condemnation; and

WHEREAS, Collier is willing to accept land in Phoenix, Arizona, that currently is owned by the United States and managed by the Bureau of Indian Affairs for purposes of Indian education, in exchange for certain interests in lands owned by Collier in southwestern Florida; and

WHEREAS, the parties recognize that the Bureau of Indian Affairs has determined in a report issued on February 3, 1987, that new educational facilities have recently been completed for the benefit of Indian education in Arizona, and the school facilities on the Phoenix property are no longer essential to meet the educational needs of Arizona Indians and have been recommended for closure; and

WHEREAS, the Bureau of Indian Affairs intends to continue its operation of the Phoenix Indian School during the 1987-1988 school year and possibly in subsequent years; and

WHEREAS, the Secretary anticipates no future need for the Phoenix Indian School property after closure of the school facilities; and

WHEREAS, Collier and the City of Phoenix have entered into an agreement establishing unique and comprehensive guidelines for planning the development of the Phoenix Indian School property, in the event that such property is acquired by Collier; and

WHEREAS, the Phoenix Indian School property, including dedicated rights-of-way for public roads, consists of approximately 111 acres of land of which 20 acres are to be conveyed by the United States to the City of Phoenix for the purpose of providing publicly accessible open space, 4.5 acres of which are to be conveyed by the United States to the State of Arizona for the construction and operation of a home for veterans, and 11.5 acres of which are to be transferred administratively by the Secretary to the Veterans Administration, for use in its programs; and

WHEREAS, the parties agree that the lands, interests in lands and other consideration to be conveyed and received by each party under this Agreement are of comparable value and that the interests in lands to be conveyed by Collier to the United States pursuant to this exchange have been valued by the parties as if Collier's access rights have already been acquired or condemned by the State of Florida in connection with the conversion of State Road 84 to Interstate Highway 75; and

WHEREAS, the parties recognize that land exchanges provide a mutually desirable means of acquiring lands of respective interest to the parties; and

WHEREAS, the Secretary has determined that the proposed exchange of lands and interests in lands set forth in this Agreement is in the public interest; and

WHEREAS, the parties recognize that legislation by the Congress of the United States is required to effectuate this Agreement and the proposed exchange contained herein;

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the parties hereto covenant and agree as follows:

1. (a) Upon execution of this Agreement, the parties agree to pursue the exchange of lands and interests in lands, as

described in this Agreement, recognizing that legislation by the Congress of the United States authorizing, ratifying and confirming this Agreement is required. In the event of enactment of such legislation by the Congress of the United States, which authorizes or directs the Secretary to enter into the obligations described in this Agreement, the parties agree to the provisions specified in the following paragraphs and to be bound thereby.

(b) The parties further agree that the performance of the obligations and commitments made in this Agreement is expressly conditioned upon the enactment of legislation by the Congress of the United States authorizing, ratifying and confirming the terms of this Agreement, and that the obligations and commitments made in this Agreement are not binding on the parties except upon enactment of legislation by the Congress of the United States authorizing and permitting the commitments made by the parties.

(c) Prior to the enactment of legislation by the Congress of the United States authorizing, ratifying and confirming the terms of this Agreement, no party shall be required to undertake any action required by this Agreement or receive any benefit hereunder, except that the parties agree hereafter to undertake the efforts described in subparagraphs (a) and (d) of this paragraph 1 and further agree not to alienate, encumber, substantially alter the physical condition, or otherwise effect a material change in the management of any lands or interests in lands proposed to be exchanged or conveyed under this Agreement, in accordance with the provisions of subparagraphs 30(a), (b) and (d) of this Agreement.

(d) Collier agrees to support the terms of this Agreement during consideration by the Congress of the United States of legislation authorizing, ratifying and confirming the terms of this Agreement, and the Secretary similarly agrees to support the terms of this Agreement to the extent consistent with the legislative, budgetary, legal and programmatic policies of the Executive Branch of the United States. The parties mutually agree that they will not seek to alter or have altered the terms of this Agreement without first trying in good faith and with due diligence to obtain the concurrence of the other parties to this Agreement in any such alteration, and will keep the other parties to this Agreement fully and timely informed of any efforts in which they are involved or of which they are aware, individually or collectively, to make or obtain such alteration.

(e) Notwithstanding any other provision of this Agreement, if the Congress of the United States enacts authorizing, ratifying and confirming legislation which amends or alters any of the terms of this Agreement in the absence of specific written concurrence of Collier in such amendment or alteration, Collier shall have the right to terminate this Agreement without any further obligation hereunder by written notice received by the Secretary within thirty days of the enactment of such legislation.

2. (a) In the event that legislation described in paragraph 1 of this Agreement is enacted into law on or before December 31, 1988, or such later date as the parties may agree upon by mutual consent (the "legislative termination date"), this Agreement, as executed, shall constitute an irrevocable contractual offer from the United States to Collier. Collier may accept the offer of the United States to enter into the exchange of interests in lands set forth in this Agreement by notice in writing to the Secretary at any time within three years from the date of enactment of the legislation described in paragraph 1 of this Agreement, provided, that in no event shall Collier have fewer than 30 days in which to accept the offer to enter into the exchange from the date of receipt by Collier of written notice from the Secretary as to the identification of qualifying offers to purchase the Phoenix Indian School property as required in the legislation described in paragraph 1 of this Agreement. On a date no later than 90 days prior to acceptance by Collier of the offer of the United States, Collier shall provide preliminary notice in writing of its intent to accept such offer to:

(1) the Secretary;

(2) the Mayor of the City of Phoenix;

(3) the Administrator of the Veterans Administration;

(4) the InterTribal Council of Arizona;

(5) the governing body of the Navajo Tribe; and

(6) the Governor of the State of Arizona.

Notice by Collier to the United States of its preliminary intent to accept such offer shall not constitute acceptance of the offer of the United States under this subparagraph (a) and shall not bind Collier to accept such offer. The offer of the United States to enter into the exchange of interests in lands set forth in this Agreement may only be accepted by Collier by separate written notice to the United States in accordance with the provisions of this subparagraph (a).

(b) At any time prior to the exchange of lands and interests in lands as described in this Agreement, the Secretary may terminate this Agreement and the obligations hereunder to exchange lands and interests in lands if he determines that the interests in lands described in paragraphs 8 and 9 of this Agreement have become polluted, severely damaged, hazardous or otherwise unsuitable for inclusion in the National Park System or the National Wildlife Refuge System, whether by actions of Collier or third parties or by an act of God, provided, that the Secretary acknowledges that, at the time of execution of this Agreement, the interests in lands described in paragraphs 8 and 9 of this Agreement are suitable for inclusion in such Systems, and provided, further, that nothing in this subparagraph (b) shall alter the obligations of Collier set forth in paragraph 12 of this Agreement.

(c) If Collier does not accept the offer of the United States to enter into the exchange of interests in lands described in this Agreement within the time period prescribed in subparagraph (a), and if the Phoenix Indian School property is not sold to a third party pursuant to the provisions of the legislation described in paragraph 1 of this Agreement and the Secretary does not therefore purchase the interests in lands identified in paragraphs 8 and 9 of this Agreement in accordance with the provisions of subparagraph (d) and the legislation described in paragraph 1 of this Agreement, this Agreement shall terminate, and the parties shall return to their status and rights prior to the execution of this Agreement. In the event of termination of this Agreement under this subparagraph (c) or any other provision of this Agreement, the parties agree to take whatever actions and execute whatever documents are necessary to restore the *status quo ante* this Agreement.

(d) In the event that the property described in subparagraph 7(a) of this Agreement is sold, pursuant to the provisions of the legislation described in paragraph 1 of this Agreement, to a third party following the provision by Collier of preliminary notice under subparagraph 2(a) of this Agreement, Collier agrees, as an irrevocable contractual offer, to sell to the United States, and the United States agrees to purchase, within 90 days of the sale of the Phoenix Indian School property to such third party, the interests in lands identified in paragraphs 8 and 9 of this Agreement for $45.1 million plus the reimbursable costs of Collier as defined in such legislation.

3. In the event that legislation described in paragraph 1 of this Agreement is not enacted into law on or before the legislative termination date, this Agreement shall be null and void in all respects, and the parties shall return to their status and rights prior to the execution of this Agreement.

4. Except as provided in paragraphs 1 and 2 of this Agreement, the obligations and rights of the parties under this Agreement shall be effective and binding upon the parties only upon acceptance by Collier of the offer of the United States as provided in subparagraph 2(a) of this Agreement.

5. Unless specifically stated otherwise, the commitments of Collier shall be binding on both Collier Enterprises and

Barron Collier Company. All consideration, including all interests in lands, to be conveyed by the United States to Collier shall be conveyed as an undivided interest to Collier Enterprises and Barron Collier Company or as may otherwise be agreed to in writing between Collier Enterprises and Barron Collier Company.

6. The parties recognize that, except for those interests in lands owned by Collier Development Corporation, the interests in lands identified in paragraphs 8 and 9 of this Agreement for conveyance to the United States by Collier Enterprises and Barron Collier Company, respectively, are beneficially owned by Collier Enterprises and Barron Collier Company, but the nominal record title is: (a) for Collier Enterprises, in the names of its partners, Isabel Collier Read, Miles C. Collier, individually and as Trustee, and Barron G. Collier II, as Trustee; and (b) for Barron Collier Company, in the names of its partners Lamar Gable, Harold S. Lynton and Marguerite R. Collier as Trustees for Marguerite R. Collier; Lamar Gable, Harold S. Lynton and Juliet C. Sproul as Trustees for Juliet C. Sproul; Lamar Gable, Harold S. Lynton and Barron Collier III as Trustees for Barron Collier III; and Barron Collier III individually.

7. (a) The Secretary shall, simultaneously with the conveyance by Collier to the United States of the interests in lands and other consideration set forth in paragraphs 8 through 14 of this Agreement, convey to Collier, by quitclaim deeds (in the form set forth in Appendix 1, which is attached hereto and incorporated hereby as a part of this Agreement), fee simple title (together with all tenements, hereditaments and other rights, easements and appurtenances thereunto belonging and all fixtures and improvements thereon remaining at the time of the conveyance) to the interests in land of the United States in the Phoenix Indian School property in Phoenix, Arizona, which property is generally described as follows (hereinafter referred to as the "Phoenix Indian School property"):

> A parcel of land in the southeast quarter of section 20, Township 2 North, Range 3 East, Gila and Salt River Meridian, City of Phoenix, Maricopa County, Arizona, more particularly described as follows:
>
> Beginning at the ¼ section corner of sections 20 and 29, T.2 N., R.3 E., Gila and Salt River Meridian, Arizona, said point of beginning being located within the intersection of Central Avenue and Indian School Road in Phoenix, Arizona.
>
> Thence, N.0° 10'38" E., along the north and south center line of section 20, 1352.74 feet, to the southwest corner of the property described in the quitclaim deed dated November 20, 1959, and recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, S.89° 49'22" E., 550.00 feet, along the south line to the southeast corner of said property recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, N.0° 10'38" E., 1281.04 feet, along the east boundary of said property recorded in Docket 3273, Page 412, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 430, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 428, of the Maricopa County Records, and along the east boundary to the northeast corner of the property recorded in Docket 1919, Page 10, of the Maricopa County Records, which corner is on the east and west center line of section 20.

Thence, S.89° 30'01" E., 1499.51 feet, along the east and west center line of section 20, to the west boundary of the property described as Tract B in the quitclaim deed dated December 28, 1955, and recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.0° 03'27" W., 577.41 feet, along the west boundary to the southwest corner of the said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.89° 25'01" E., 585.00 feet, along the south boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to the southeast corner of said tract.

Thence, N.0° 03'27" E., 578.26 feet, along the east boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to a point on the east and west center line of section 20.

Thence, S.89° 30'01" E., 33 feet, along the east and west center line of section 20, to the ¼ section corner of sections 20 and 21.

Thence, S.0° 03'27" W., 608.60 feet, along the line between sections 20 and 21, to a point on said line.

Thence, N.89°, 24'00" W., 618.00 feet, to the northwest corner of the property transferred to the U.S. Veterans Administration by Executive Order No. 9854, dated May 16, 1947 (FR Vol. 12, No. 99, dated May 20, 1947).

Thence, S.0° 03'27" W., 2000 feet, along the west boundary to the southwest corner of said property of the U.S. Veterans Administration.

Thence, S.89° 24'00" E., 585.00 feet, along the south boundary to the southeast corner of said Veterans Administration property.

Thence, N.0° 03'27" E., 2000 feet, along the east boundary to the northeast corner of said Veterans Administration property.

Thence, S.89° 24'00" E., 33 feet, to a point on the line between sections 20 and 29.

Thence, S.0° 03'27" W., along the line between sections 20 and 21, to the corner of sections 20, 21, 28, and 29, which is within the intersection of 7th Street and Indian School Road.

Thence, N.89° 24'00" W., along the line between sections 20 and 29, to the ¼ section corner of sections 20 and 29, and the point of beginning.

Said parcel of land containing 110.97 acres.

less a parcel of land from within the property described in this subparagraph (a), aggregating 20 acres of land, which parcel shall be the northernmost 20 acres from within such property, as generally identified as Tract B on the map described in subparagraph (b) of this paragraph 7 for conveyance to the City of Phoenix, Arizona, unless an alternative 20 acres of land from within such property are identified for conveyance by the United States to the City of Phoenix, Arizona, in accordance with the acreage identification process set forth in the legislation described in paragraph 1 of this Agreement, in which event such alternative 20 acres of land shall be conveyed by the United States to the City of Phoenix, Arizona, in accordance with the provisions of this Agreement; less parcels of land to be conveyed to the City of Phoenix, Arizona, from within the property described in this subparagraph (a), which parcels shall be those portions of the tracts identified as Tracts E, F and G on the map described in subparagraph (b) of this paragraph 7 that are subject to the existing rights-of-way of Indian School Road and 7th Street and abut lands subject to the administrative jurisdiction of the Veterans Administration on the date of execution of this Agreement or are adjacent to the parcel of land transferred administratively to the Veterans Administration in accordance with the provisions of this Agreement and the legislation described in paragraph 1 of this Agreement; less a parcel of land remaining within the property described in this subparagraph (a), aggregating approximately 4.5 acres of land, for conveyance to the State of Arizona, which parcel shall be the northeasternmost 4.5 acres remaining within such property after the conveyance of 20 acres to the City of Phoenix, Arizona, as described above, unless an alternative 4.5 acres of land from within such property are identified for conveyance by the United States to the State of Arizona, in accordance with the acreage identification process set forth in the legislation described in paragraph 1 of this Agreement, in which event such alternative 4.5 acres of land shall be conveyed by the United States to the State of Arizona in accordance with the provisions of this Agreement; and less a parcel of land remaining within the property described in this subparagraph (a), aggregating approximately 11.5 acres of land, for administrative transfer to the Veterans Administration, which parcel shall be the southeasternmost 11.5 acres from within such property, as generally identified as Tract C on the map described in subparagraph (b) of this paragraph 7, unless an alternative parcel within such property is identified for administrative transfer by the Secretary to the Veterans Administration pursuant to the legislation described in paragraph 1 of this Agreement, in which event such alternative parcel shall be transferred administratively by the Secretary to the Veterans Administration in accordance with the provisions of this Agreement.

(b) A map depicting the lands described in subparagraph (a) of this paragraph 7 is included as Appendix 2 attached hereto and incorporated hereby as a part of this Agreement. The parties agree that the map in Appendix 2 generally depicts the lands described in subparagraph (a), but that the map is included herein for illustrative purposes only and that the legal descriptions set forth in subparagraph (a) shall be the controlling evidence thereof.

(c) Collier hereby agrees that, after the conveyance of the lands described in subparagraph (a) of this paragraph 7, Collier shall, after consultation with the Secretary, the Arizona State Historic Preservation Officer, the Mayor of the City of Phoenix, and the InterTribal Council of Arizona, either preserve the War Memorial Monument in place on the Phoenix Indian School property or relocate the War Memorial Monument to an appropriate location.

8. Collier Enterprises shall, simultaneously with the conveyance by the Secretary to Collier prescribed by subparagraph 7(a) of this Agreement, convey or cause to be conveyed to the United States all the right, title and interest (including all tenements, hereditaments and other rights, easements and appurtenances thereunto belonging, and only those fixtures and improvements thereon described in paragraph 21 of this Agreement) of Collier Enterprises in the following lands, free and clear of all liens and encumbrances, reserving unto Collier the interests in lands and easements described in paragraphs 15 through 19 of this Agreement, and in accordance with the provisions of paragraph 21 of this Agreement:

(a) Big Cypress National Preserve Addition, as described as such in Exhibit A-1 to Appendix 4;

(b) Big Cypress National Preserve Addition Strip East of State Road 29, as described as such in Exhibit A-1 to Appendix 4;

(c) Florida Panther National Wildlife Refuge Lands, as described as such in Exhibit A-1 to Appendix 4;

(d) Ten Thousand Islands National Wildlife Refuge (uplands), as described as such in Exhibit A-1 to Appendix 4; and

(e) Ten Thousand Islands National Wildlife Refuge (lands below the mean highwater mark), as described as such in Exhibit A-1 to Appendix 5.

9. Barron Collier Company shall, simultaneously with the conveyance by the Secretary to Collier prescribed by subparagraph 7(a) of this Agreement, convey or cause to be conveyed to the United States all the right, title, and interest (including all tenements, hereditaments and other rights, easements and appurtenances thereunto belonging, and only those fixtures and improvements thereon described in paragraph 21 of this Agreement) of Barron Collier Company in the following lands, free and clear of all liens and encumbrances, reserving unto Collier the interests in lands and easements described in paragraphs 15 through 19 of this Agreement, and in accordance with the provisions of paragraph 21 of this Agreement:

(a) Big Cypress National Preserve Addition, as described as such in Exhibit A-2 to Appendix 4;

(b) Big Cypress National Preserve Addition Strip East of State Road 29, as described as such in Exhibit A-2 to Appendix 4;

(c) Florida Panther National Wildlife Refuge Lands, as described as such in Exhibit A-2 to Appendix 4;

(d) Ten Thousand Islands National Wildlife Refuge (uplands), as described as such in Exhibit A-2 to Appendix 4; and

(e) Ten Thousand Islands National Wildlife Refuge (lands below the mean highwater mark), as described as such in Exhibit A-2 to Appendix 5.

10. Maps depicting the lands described in paragraphs 8 and 9 of this Agreement are included in Appendix 3 attached hereto and incorporated hereby as a part of this Agreement. The parties agree that the maps in Appendix 3 generally depict the lands described in paragraphs 8 and 9 of this Agreement. The parties further agree that the maps that depict the lands described in paragraphs 8 and 9 of this Agreement are included herein for illustrative purposes only and that the narrative legal descriptions referred to in paragraphs 8 and 9 of this Agreement and set forth in the Exhibits to Appendices 4 and 5 shall be the controlling evidence thereof.

11. (a) The conveyance by each of Collier Enterprises and Barron Collier Company to the United States of the interests in lands respectively described in subparagraphs 8(a)-(d) and 9(a)-(d) of this Agreement shall be in the form of a general

warranty deed, in the form set forth in Appendix 4, which is attached hereto and incorporated hereby as a part of this Agreement, reserving unto Collier the interests in lands and easements described in paragraphs 15 through 19 of this Agreement and shall fully warrant, subject to such interests in lands and easements reserved by Collier, the title to such respective interests in lands conveyed to the United States and shall defend such title against the lawful claims and demands of all persons whomsoever.

(b) The conveyance by each of Collier Enterprises and Barron Collier Company to the United States of the interests in lands respectively described in subparagraphs 8(e) and 9(e) of this Agreement shall be in the form of a quitclaim deed, free and clear of liens and mortgages created by or through Collier and of taxes due from Collier, in the form set forth in Appendix 5, which is attached hereto and incorporated hereby as a part of this Agreement, reserving unto Collier the interests in lands and easements described in paragraphs 15 through 19 of this Agreement.

(c) Prior to the execution of this Agreement and prior to the conveyance to the United States of the interests in lands described in paragraphs 8 and 9 of this Agreement, Collier shall provide to the Secretary opinions of counsel stating that the partnerships have the legal power to execute this Agreement or to convey or cause to be conveyed the lands identified in paragraphs 8 and 9 of this Agreement and have complied with all the terms and conditions of any partnership agreements, general, limited or otherwise, as well as applicable State and local law, regarding the execution of this Agreement or the conveyance of lands subject to the Agreement.

(d) Prior to the conveyance to the United States of the interests in lands described in subparagraphs 8(a), (d) and (e) and 9(a), (d) and (e) of this Agreement, Collier shall acquire at its cost title evidence (and shall make no claim for reimbursement of such cost from the United States) in a form complying with the United States Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, recognizing that such title evidence may contain an exclusion with respect to the interests in lands described in subparagraphs 8(e) and 9(e) of this Agreement for claims of the United States and the State of Florida in and to any lands lying beneath navigable waters.

(e) Prior to the conveyance to the United States of the interests in lands described in subparagraphs 8(b) and (c) and 9(b) and (c) of this Agreement, Collier shall acquire at its cost title insurance with respect to such interests in lands (and shall make no claim for reimbursement of such cost from the United States) in a form complying with the United States Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States.

(f) If after Collier has accepted the offer of the United States in accordance with the provisions of subparagraph 2(a) of this Agreement Collier cannot convey to the Secretary in accordance with the provisions of this paragraph 11 title to the interests in lands described in paragraphs 8 and 9 of this Agreement, the parties agree that, in order for Collier to convey these interests in lands in accordance with the provisions of this paragraph 11, the United States may acquire title to all of the interests in lands described in paragraphs 8 and 9 of this Agreement by condemnation or other judicial proceedings, in which event Collier agrees to cooperate with the United States in the prosecution of such proceedings; agree that the obligations of the Secretary in the exchange of interests in lands set forth in this Agreement shall be the full amount of the award of just compensation, inclusive of interest, for the taking of such interests in lands; agree that any and all court costs, costs related to service of process, and awards of just compensation that may be made in the proceeding to any third-party defendant in respect to such interests in lands shall be payable by Collier and the amount of such payments shall not be deductible by Collier from the amount payable by Collier to the United States in the exchange of interests in lands set forth in this Agreement; and agree that the obligations of the Secretary in the exchange of interests in lands set forth in this Agreement shall be in full satisfaction of any and all claims of Collier for the payment of compensation under this Agreement.

12. (a) Collier has received no actual notice and is not aware that any of the interests in lands to be conveyed to the United States pursuant to paragraphs 8 and 9 of this Agreement has ever been listed by the State of Florida, or any agency of the United States, as containing any hazardous waste, hazardous material, chemical waste, or any other toxic substance, or that any of the aforesaid substances has been spilled, or dumped on such interests in lands.

(b) Collier agrees to indemnify the United States, as the owner of the interests in lands described in paragraphs 8 and 9 of this Agreement, from any claim, loss, liability, damages or response costs whatsoever against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, involving the interests in lands described in paragraphs 8 and 9 of this Agreement, arising solely with respect to the release or threatened release into the environment of any hazardous substance shown to have been in existence on such interests in lands prior to the conveyance of such interests in lands by Collier to the United States, or resulting from activities undertaken, subsequent to the conveyance of such interests in lands, by Collier, its successors, assigns, agents, contractors or others in the exercise of Collier's reserved oil and gas rights. This indemnification shall include all reasonable costs and expenses (including reasonable attorneys' fees), incurred by the United States in connection with any claim, loss, suit, demand, assessment, judgment or response cost incident to the matters indemnified against pursuant to this paragraph. This indemnity shall extend only to: (1) the release or threatened release into the environment of a hazardous substance shown to have been in existence on such interests in lands prior to the conveyance of such interests in lands by Collier to the United States, as to which the United States or Collier receives legal process or other official notification from a competent court or governmental agency, including the United States, or as to which the United States initiates notice pursuant to Section 120 of CERCLA, as amended, within 25 years from the date hereof, involving Collier or the United States in a judicial, administrative, investigative or other proceeding the purpose of which is to determine the necessity and scope of clean-up, response, or remedial activity and liability for the related costs or damages; or (2) the release or threatened release into the environment of any hazardous substance resulting from activities undertaken subsequent to the conveyance of such interests in lands by Collier, its successors, assigns, agents, contractors or others in the exercise of Collier's reserved oil and gas rights at a specific location, as to which Collier or the United States receives legal process or other official notification from a competent court or governmental agency, including the United States, or as to which the United States initiates notice pursuant to Section 120 of CERCLA, as amended, within ten years from the date of written notice by Collier to the Secretary that all oil and gas operations at the specific location have ceased and that all reclamation activities at said location are complete, involving Collier or the United States in a judicial, administrative, investigative or other proceeding the purpose of which is to determine the necessity and scope of clean-up, response, or remedial activity and liability for the related costs or damages.

(c) Whenever the United States shall learn of the existence of any liability for which Collier is or may be responsible under the undertakings set forth in subparagraph (b) of this paragraph 12, the United States shall notify Collier promptly and furnish such copies of documents or other information as the United States may have which may be used or useful in the defense thereof and shall afford Collier full opportunity to participate in the defense of the same at its own expense with counsel of its own selection, and shall upon request and at Collier's expense cooperate with Collier in the defense thereof.

(d) The provisions of this paragraph 12 shall survive the exchange of lands described in this Agreement and shall remain in full force and effect thereafter.

(e) The parties agree that the provisions of this paragraph 12 shall not be construed to alter any obligation or liability of the parties under applicable Federal or State law.

13. In addition to the conveyances to the United States of interests in lands by Collier Enterprises and Barron Collier Company as described in paragraphs 8 and 9 of this Agreement in exchange for the conveyances of lands to Collier by the United States as described in paragraph 7 of this Agreement, Collier shall, at the time of the conveyance to the United States of the interests in lands described in paragraphs 8 and 9 of this Agreement, pay to the United States a lump sum payment of $34.9 million (subject to the adjustments described in paragraph 14 of this Agreement relating to the conveyance of a parcel of land to the State of Arizona and the administrative transfer of a parcel

of land to the Veterans Administration). No obligation of Collier to make any payment to the United States under this paragraph 13 or paragraph 14 of this Agreement shall arise prior to the acceptance by Collier of the offer of the United States in accordance with the provisions of subparagraph 2(a) of this Agreement. All funds to be paid by Collier to the United States under this paragraph 13 and paragraph 14 of this Agreement shall be made by cashier's check or wire transfer payable to the United States, for distribution in accordance with the provisions of the legislation authorizing, ratifying and confirming this Agreement, or as may otherwise be directed by the Congress of the United States or the Secretary pursuant to valid legal authority.

14. If, upon closing of the Land Exchange contemplated in this Agreement and pursuant to the legislation described in paragraph 1 of this Agreement, the total number of acres of land from within the Phoenix Indian School property transferred administratively to the Veterans Administration and conveyed to the State of Arizona is less than 16.0 acres, and any such acres not transferred administratively to the Veterans Administration or conveyed to the State of Arizona are made available for conveyance to Collier pursuant to the terms of this Agreement, Collier agrees that, at the time of closing, it shall accept conveyance of such additional acres of land and shall pay to the United States the total of $34.9 million set forth in

paragraph 13 of this Agreement plus an amount equal to $1.17 million times the number of acres or portions thereof to the nearest one-hundredth of an acre fewer than 16.0 acres within the Phoenix Indian School property not transferred administratively to the Veterans Administration or conveyed to the State of Arizona and conveyed to Collier pursuant to the terms of this Agreement.

15. Notwithstanding any other provision of this Agreement, and notwithstanding the conveyance by Collier to the United States of any interests in lands described in paragraphs 8 and 9 of this Agreement, Collier retains and reserves all rights of access from State Road 84 and Interstate Highway 75 to the interests in lands described in subparagraphs 8(a) and (b) and 9(a) and (b) of this Agreement, including any such rights that may be condemned or purchased in lieu of condemnation by the State of Florida, and the right to receive all compensation (hereinafter referred to as "I-75 Compensation") that may arise as a result of any proceeding (or purchase in lieu of condemnation) that may be initiated, whether before, on or after the date of execution of this Agreement or the date of enactment of legislation by the Congress of the United States as described in paragraph 1 of this Agreement, to acquire from Collier lands, interests in lands, rights-of-way or rights of access for the purposes of the construction, operation or maintenance of

Interstate Highway 75. The agreement of the parties, set forth in paragraphs 1(c) and 30(a) and (b) of this Agreement, not to encumber or otherwise effect a material change in the management of lands or interests in lands proposed to be exchanged or conveyed to any party under this Agreement shall not be construed to prevent Collier, in its absolute discretion, from pursuing, negotiating, agreeing to, effectuating or receiving any such I-75 Compensation.

16. In any conveyance by Collier to the United States of any interests in lands described in paragraphs 8 and 9 of this Agreement, Collier shall reserve unto itself, with respect to the interests in lands described in subparagraphs 8(a)-(d) and 9(a)-(d) of this Agreement, the interests included in the warranty deed set forth in Appendix 4 to this Agreement, and, with respect to the interests in lands described in subparagraphs 8(e) and 9(e) of this Agreement, the interests included in the quitclaim deed set forth in Appendix 5 to this Agreement, which reservations shall reserve to Collier, to the extent provided for in such deeds, all of the interest and ownership of Collier in the oil and gas, and other minerals necessarily produced concomitantly with oil or gas, in, under and that may be produced from such lands.

17. In any conveyance by Collier to the United States of any interests in lands described in paragraphs 8 and 9 of this Agreement, Collier shall reserve unto itself, with respect to the interests in lands described in subparagraphs 8(a)-(d) and 9(a)-(d) of this Agreement, the easement reserved and described in the warranty deed set forth in Appendix 4 to this Agreement, and, with respect to the interests in lands described in subparagraphs 8(e) and 9(e) of this Agreement, the easement reserved and described in the quitclaim deed set forth in Appendix 5 to this Agreement, which easements shall provide, to the extent provided for in such deeds, for access across such lands as may be conveyed to the United States by Collier pursuant to this Agreement in order to ensure reasonable access to and ability to explore, develop and extract oil and gas reserved by Collier.

18. Notwithstanding any other provision of this Agreement, and notwithstanding the conveyance by Collier to the United States of any interests in lands described in paragraphs 8 and 9 of this Agreement, and in addition to the access easements described in paragraph 17 of this Agreement, Collier reserves unto itself all present rights of access, including without limitation rights of access from and to Interstate Highway 75, State Road 84, State Road 29, Turner River Road and any other existing public or private road, to the oil and gas in and under

the lands described in paragraphs 8 and 9 of this Agreement that have been or are at the time of such conveyance available to it under existing instruments of record, the laws of the United States, the laws of the State of Florida, or the common law. This reservation shall not include any rights of access taken by condemnation (or acquired by purchase in lieu of condemnation) and for which Collier receives I-75 Compensation in the proceedings associated with the conversion of State Road 84 to Interstate Highway 75.

19. The parties hereby agree that, upon enactment of the legislation described in paragraph 1 of this Agreement, any and all exploration for, or development or production of oil and gas reserved by Collier in and under the interests in lands conveyed by Collier to the United States pursuant to paragraphs 8 and 9 of this Agreement and within the boundaries of the Florida Panther National Wildlife Refuge or the Ten Thousand Islands National Wildlife Refuge shall be conducted in accordance with the stipulations on Collier's activities and uses set forth in Appendix 7 attached hereto and incorporated hereby as a part of this Agreement, provided, however, that the stipulations set forth in Appendix 7 shall not apply to those operations or activities regarding the exploration for, or development, production, extraction or transportation of oil, gas and related minerals authorized or permitted to be undertaken pursuant to

State law prior to enactment of the legislation described in paragraph 1 of this Agreement. All of the provisions of Appendix 7 shall be a covenant running with the land, shall be binding upon the United States and upon Collier, its heirs, successors and assigns, and shall be included as an attachment to the deeds described in paragraph 11 of this Agreement.

20. If the Secretary comments upon any application made by Collier or an operator to any government agency for permits or other approvals necessary for the exploration for, or development or production of the oil and gas in and under the interests in lands reserved by Collier pursuant to paragraph 16 of this Agreement, such comments shall be consistent with the provisions of this Agreement and the procedures and standards set forth in the stipulations set forth in Appendices 6 and 7 to this Agreement, or such final rules, regulations or stipulations as the Secretary shall promulgate governing such exploration for, or development or production of oil and gas pursuant to express statutory authority to promulgate such rules, regulations or stipulations as is provided in the Big Cypress National Preserve Addition Act, Pub. L. 100-301.

21. Collier shall convey to the United States the interests in lands described in paragraphs 8 and 9 of this Agreement subject to valid existing rights of way of record for public

utilities, roads, water lines, power lines, telephone lines, railroads and pipelines, and rights of way of record in third parties for access, and the leases of the Everglades Chamber of Commerce and the Florida State Police Station. Notwithstanding the provisions of this paragraph 21, Collier shall extinguish at its cost (and Collier shall make no claim for reimbursement of such cost from the United States), prior to conveyance to the United States of the interests in lands described in paragraphs 8 and 9 of this Agreement, all farming, grazing, hunting, fishing and recreational leases, licenses or uses, demolish all structures habitable by human beings associated with such leases, licenses or uses, and remove any and all trespassers known to Collier on such lands.

22. The Secretary shall convey to Collier the interests in lands described in paragraph 7 of this Agreement subject to valid existing rights of use by others, including, but not limited to, the unexpired term of any outstanding lease, license, permit or contract, _provided_, that the Secretary shall terminate or suspend, if terminable or suspendable in the judgment of the Secretary without liability to the United States, that portion of any such lease, license, permit or contract that authorizes activities on the lands which are to be conveyed to Collier pursuant to paragraph 7 of this Agreement, and _provided_, _however_, that the Secretary shall only terminate or suspend any lease,

license, permit or contract pursuant to which the Bureau of Indian Affairs operates the school and related facilities on these lands upon the closure of the school or in accordance with the provisions of paragraph 24 of this Agreement.

23. The Secretary shall notify Collier in writing of the closure of the Phoenix Indian School operated by the Bureau of Indian Affairs on the property to be conveyed to Collier in Phoenix, Arizona, within 60 days of the closure of the school. Within 30 days following the enactment of legislation described in paragraph 1 of this Agreement, and at six month intervals thereafter, the Secretary shall report to Collier about the current status of the school and the projected date for closure of the school.

24. If Collier accepts the offer of the United States pursuant to subparagraph 2(a) of this Agreement prior to the closure of the Phoenix Indian School operated by the Bureau of Indian Affairs on the property to be conveyed to Collier in Phoenix, Arizona, Collier shall permit the continued operation of the school under the management of the Bureau of Indian Affairs for a period not to exceed one year or until the closing of the school, whichever occurs first, at no cost to the United States during that period for the continued use of the property conveyed to Collier in Phoenix, Arizona. The Secretary may extend the

period for use of the school by the Bureau of Indian Affairs for an additional period not to exceed one year under such terms and conditions as may mutually be agreed upon through good faith negotiations between Collier and the Secretary.

25. (a) After enactment of legislation described in paragraph 1 of this Agreement, and after acceptance by Collier of the offer of the United States in accordance with the provisions of subparagraph 2(a) of this Agreement, the closing of the land exchange contemplated by this Agreement, including the exchange of deeds and the payment to the United States of cash consideration, shall be at the Department of the Interior, Washington, D.C., on sixty days prior written notice by the Secretary to Collier or by Collier to the Secretary. This closing date cannot, however, be earlier than 90 days or later than six months from the date of the acceptance by Collier of the offer of the United States in accordance with the provisions of subparagraph 2(a) of this Agreement, unless the parties mutually agree in writing to an earlier or later closing date. The expenses for revenue stamps, transfer taxes, recording fees and similar expenses incidental to the land conveyances by Collier and the United States shall be borne in each case by the party receiving title to the property.

(b) The transaction described in this paragraph 25 shall not terminate the obligations of the parties set forth elsewhere in this Agreement which may be required to be performed subsequent to such transaction.

26. The Secretary hereby finds that the acquisition of interests in lands in the vicinity of Everglades National Park and Big Cypress National Preserve will enhance the protection of the outstanding natural values of the areas and further the purposes of the Big Cypress National Preserve Act, the National Wildlife Refuge System Administration Act, the Fish and Wildlife Act of 1956, and the Endangered Species Act. For these reasons, the Secretary concludes that the execution of this Agreement is in the public interest.

27. Based on his review of the values of the lands, interests in lands and other consideration being exchanged pursuant to this Agreement, the Secretary finds that the consideration being exchanged by the parties is comparable in value.

28. In the event of a breach of this Agreement in which any party fails to convey lands in accordance with the terms and conditions set forth in this Agreement, the parties agree that the appropriate remedy in any judicial proceeding shall be specific performance of the duties and obligations of the parties

under this Agreement, provided, however, that the parties recognize that, in the event of such a breach of this Agreement, the Secretary may also use eminent domain authority as a means of acquiring such interests in lands.

29. In the event that the exchange of lands provided for in this Agreement is set aside because of a final and non-appealable order of a court of competent jurisdiction, the parties shall return to their status and rights prior to the execution of this Agreement and the parties agree to take whatever actions and execute whatever documents are necessary to restore the status quo ante the exchange.

30. (a) The parties mutually covenant and agree that, prior to the conveyance of lands and interests in lands provided for in this Agreement, the parties shall not alienate (except between or among Collier and their partners) or encumber any lands or interests in lands proposed to be exchanged or conveyed to any party under this Agreement, provided, that, if this Agreement has terminated pursuant to any provision of this Agreement, this subparagraph (a) shall no longer be effective.

(b) The parties mutually covenant and agree that, prior to the conveyance of lands and interests in lands provided for in this Agreement, the parties shall not substantially alter the physical condition or otherwise effect a material change in the management of any lands or interests in lands proposed to be exchanged or conveyed to any party under this Agreement, provided, that the Secretary shall have the right to undertake an archeological survey of the lands described in paragraph 7 of this Agreement, including the right to remove from such lands subsurface features and other objects of archeological significance, for a period of one year following the execution of this Agreement by the parties, regardless of any change in the ownership status of such lands, provided, further, that, prior to the conveyance to Collier of the lands described in subparagraph (a) of paragraph 7 of this Agreement, the Secretary, in his sole discretion, may remove, or may permit third parties to remove, any or all buildings, fixtures, improvements, personal property, and subsurface features and other objects of archeological significance from such lands, provided, further, that no provision of this Agreement shall be construed to prevent or preclude Collier from proceeding with any exploration for, or development or production of oil and gas that would be reserved to Collier pursuant to this Agreement, provided, further, that activities undertaken by Collier in accordance with the preceding proviso shall not be construed to alter the rights of the Secretary under subparagraph 2(b) of this Agreement, and, provided, further, that if this Agreement has terminated pursuant to any provision of this Agreement, this subparagraph (b) shall no longer be effective.

(c) Collier agrees that, prior to the conveyance by Collier to the United States of the interests in lands described in paragraphs 8 and 9 of this Agreement, employees and representatives of the Department of the Interior shall be permitted access to such interests in lands to engage in non-surface disturbing scientific studies, including studies related to the fish and wildlife resources and the environment of such interests in lands, provided, that, if this Agreement has terminated pursuant to any provision of this Agreement, this subparagraph (c) shall no longer be effective.

(d) Nothing in this Agreement shall preclude the Secretary from making improvements, alterations or modifications to the Phoenix Indian School, both as to real and personal property, as he deems necessary in his sole discretion to administer and operate the buildings and grounds as a school.

(e) Collier agrees that, prior to the conveyance to the United States of the interests in lands described in paragraphs 8 and 9 of this Agreement, Collier shall not grant or renew any lease, license, permit or contract proposed for termination in accordance with the provisions of paragraph 21 of this Agreement, and Collier shall not establish any new rights of way for public utilities, roads, water lines, power lines, telephone lines, railroads and pipelines except for those rights of way related to the exploration for, or development, production, extraction or transportation of oil or gas and related minerals.

(f) The parties agree that, prior to the conveyance by the United States to Collier of the lands described in paragraph 7 of this Agreement, Collier shall have the authority, without obtaining further authorization or permission from the Secretary, to initiate and pursue whatever actions may be necessary to provide for the expeditious planning and zoning of the Phoenix Indian School property, including any actions to obtain necessary permits or other authorizations from state or local governmental, quasi-governmental or non-governmental authorities with respect to requirements affecting the planning, zoning, preliminary platting or development of the Phoenix Indian School property. The Secretary shall reasonably cooperate with Collier and take any further actions as may be necessary to permit Collier to initiate and pursue such planning, zoning and other authorizations.

(g) The parties agree that, prior to the conveyance by the United States to Collier of the lands described in paragraph 7 of this Agreement, Collier, its agents and independent contractors shall have, upon notice in writing to the Secretary, the authority, without obtaining further authorization or permission from the Secretary, to enter upon the Phoenix Indian School property to conduct surveys, tests, inspections and studies thereon related to the planning, zoning, preliminary platting or development of the Phoenix Indian School property.

(h) The parties agree, as a contractual obligation in lieu of the Secretary implementing or applying oil and gas regulations on the lands described in paragraphs 8 and 9 of this Agreement and within the boundaries of the Big Cypress National Preserve Addition, that, upon enactment of the legislation described in paragraph 1 of this Agreement, the stipulations set forth in Appendix 6, which is attached hereto and incorporated hereby as a part of this Agreement, shall apply to any exploration for, or development or production of oil and gas in and under the interests in lands described in paragraphs 8 and 9 of this Agreement and within the boundaries of the Big Cypress National Preserve Addition until such time as the Secretary promulgates final rules, regulations or stipulations that apply to such exploration for, or development or production of oil and gas pursuant to express statutory authority to impose such rules, regulations or stipulations as is provided in the Big Cypress National Preserve Addition Act, Pub. L. 100-301, provided, however, that the stipulations set forth in Appendix 6 shall not apply to those operations or activities regarding the exploration for, or development, production, extraction or transportation of oil, gas and related minerals authorized or permitted to be undertaken pursuant to State law prior to enactment of the legislation described in paragraph 1 of this Agreement.

(i) The parties agree that this Agreement is inadmissible in any eminent domain proceeding initiated by the State of Florida or its agencies in connection with the conversion of State Road 84 to Interstate Highway 75. This obligation shall survive the termination of this Agreement.

(j) The parties agree that, if this Agreement has terminated pursuant to any provision hereof, this Agreement is inadmissible in any eminent domain proceeding initiated by the United States to acquire any of the interests in lands described in paragraphs 8 and 9 of this Agreement. This obligation shall survive the termination of this Agreement.

31. Any failure by any party to this Agreement to object to or to seek a remedy of any violation by another party of any provision of this Agreement shall not be deemed a waiver of or estop any future right to object to or to seek a remedy of a subsequent violation, whether the later violation is of the same or another provision of this Agreement.

32. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a party to this Agreement.

33. For purposes of expediting execution of this Agreement, it may be signed in separate counterparts, which, when all have so signed, shall be deemed a single agreement.

34. The parties agree that, to the extent permitted by the legislation described in paragraph 1 of this Agreement, this Agreement may be amended by mutual consent of all the parties hereto.

35. The following general provisions shall apply to each of the provisions of this Agreement, except to the extent specifically provided otherwise in such provision:

(a) The parties mutually covenant and agree not to sue each other challenging the legal authority or capacity of the Secretary, Collier Enterprises or Barron Collier Company to enter into this Agreement or to effectuate any provision herein, provided, that nothing herein shall be construed to prevent any party from suing to enforce this Agreement or seeking any other available remedy for breach of this Agreement, consistent with the terms of this Agreement.

(b) No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

(c) As used in this Agreement, the term "Secretary" shall include the Secretary of the United States Department of the Interior or his authorized representative.

(d) As used in this Agreement, the term "Collier" shall include Collier Enterprises and Barron Collier Company.

(e) As used in this Agreement, the term "Collier Enterprises" shall include Collier Enterprises, its heirs, successors and assigns.

(f) As used in this Agreement, the term "Barron Collier Company" shall include Barron Collier Company, its heirs, successors and assigns.

(g) By signing this Agreement, the spouse, if any, of any partner of Collier agrees, in any conveyance under the provisions of this Agreement of the interests in lands described in paragraphs 8 and 9 of this Agreement, to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the interests in lands described in paragraphs 8 and 9 of this Agreement and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.

(h) All terms and conditions with respect to this Agreement are expressly contained herein, and the parties agree that no representative or agent of any other party has made any representation or promise with respect to this Agreement not expressly contained herein.

(i) The parties agree that clerical and typographical errors contained herein may be corrected upon notice to the other parties. Unless an error is deemed substantive or a proposed correction is otherwise objected to by any party within sixty (60) days by written notice, correction may be made without formal ratification by the parties, or by the Congress of the United States.

(j) Unless Collier has exercised its right to terminate this Agreement under subparagraph 1(e) or any other provision of this Agreement, the parties agree that, in the event of an express conflict between any term of this Agreement and any provision of the legislation described in paragraph 1 of this Agreement, the applicable provision of the legislation shall be controlling.

36. Collier Development Corporation agrees, with respect to the lands owned by Collier Development Corporation and described in subparagraph 8(b) of this Agreement, to be bound by all of the terms, conditions, commitments and obligations of Collier set forth in this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date herein written.

UNITED STATES OF AMERICA

Date: May 12, 1988

By: Donald Paul Hodel
Donald Paul Hodel
Secretary of the Interior

COLLIER ENTERPRISES

Date: May 15, 1988

By:

BARRON COLLIER COMPANY

Date: May 12, 1988

By: Barron Collier III

COLLIER DEVELOPMENT CORPORATION

Date: May 15, 1988

By:

APPENDIX 1 (A)

QUITCLAIM DEED

FOR VALUE RECEIVED, and in accordance with the Act of ________________, 19__, ____________Stat. __________, the UNITED STATES OF AMERICA, hereinafter referred to as "Grantor," does quitclaim unto Collier Enterprises, a Florida general partnership, hereinafter referred to as "Grantee," whose post office address is 3003 North Tamiami Trail, Naples, Florida 33940, and its distributees, successors and assigns, forever, an undivided one-half interest in and to all the right, title and interest of the Grantor in and to the real property situated in the County of Maricopa, State of Arizona, described in Exhibit A attached hereto and made a part hereof.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this __ day of ________, 19__.

UNITED STATES OF AMERICA

By: ______________________

____
(Name and full title of
authorized official signing
the deed)

STATE OF ____________________

COUNTY OF ___________________

The foregoing instrument was acknowledged before me this ______ day of ______________, 19__, by _________________________.

____
Notary Public

My Commission expires:

____

(AFFIX NOTARIAL SEAL)

EXHIBIT A

DESCRIPTION OF THE INDIAN SCHOOL PROPERTY

A parcel of land in the southeast quarter of section 20, Township 2 North, Range 3 East, Gila and Salt River Meridian, City of Phoenix, Maricopa County, Arizona, more particularly described as follows:

Beginning at the ¼ section corner of sections 20 and 29, T.2 N., R.3 E., Gila and Salt River Meridian, Arizona, said point of beginning being located within the intersection of Central Avenue and Indian School Road in Phoenix, Arizona.

Thence, N.0° 10'38" E., along the north and south center line of section 20, 1352.74 feet, to the southwest corner of the property described in the quitclaim deed dated November 20, 1959, and recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, S.89° 49'22" E., 550.00 feet, along the south line to the southeast corner of said property recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, N.0° 10'38" E., 1281.04 feet, along the east boundary of said property recorded in Docket 3273, Page 412, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 430, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 428, of the Maricopa County Records, and along the east boundary to the northeast corner of the property recorded in Docket 1919, Page 10, of the Maricopa County Records, which corner is on the east and west center line of section 20.

Thence, S.89° 30'01" E., 1499.51 feet, along the east and west center line of section 20, to the west boundary of the property described as Tract B in the quitclaim deed dated December 28, 1955, and recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.0° 03'27" W., 577.41 feet, along the west boundary to the southwest corner of the said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.89° 25'01" E., 585.00 feet, along the south boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to the southeast corner of said tract.

Thence, N.0° 03'27" E., 578.26 feet, along the east boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to a point on the east and west center line of section 20.

Thence, S.89° 30'01" E., 33 feet, along the east and west center line of section 20, to the ¼ section corner of sections 20 and 21.

Thence, S.0° 03'27" W., 608.60 feet, along the line between sections 20 and 21, to a point on said line.

Thence, N.89°, 24'00" W., 618.00 feet, to the northwest corner of the property transferred to the U.S. Veterans Administration by Executive Order No. 9854, dated May 16, 1947 (FR Vol. 12, No. 99, dated May 20, 1947).

Thence, S.0° 03'27" W., 2000 feet, along the west boundary to the southwest corner of said property of the U.S. Veterans Administration.

Thence, S.89° 24'00" E., 585.00 feet, along the south boundary to the southeast corner of said Veterans Administration property.

Thence, N.0° 03'27" E., 2000 feet, along the east boundary to the northeast corner of said Veterans Administration property.

Thence, S.89° 24'00" E., 33 feet, to a point on the line between sections 20 and 29.

Thence, S.0° 03'27" W., along the line between sections 20 and 21, to the corner of sections 20, 21, 28, and 29, which is within the intersection of 7th Street and Indian School Road.

Thence, N.89° 24'00" W., along the line between sections 20 and 29, to the ¼ section corner of sections 20 and 29, and the point of beginning.

Said parcel of land containing 110.97 acres.

APPENDIX 1 (B)

QUITCLAIM DEED

FOR VALUE RECEIVED, and in accordance with the Act of ________________, 19__, ____________Stat. __________, the UNITED STATES OF AMERICA, hereinafter referred to as "Grantor," does quitclaim unto Barron Collier Company, a Florida general partnership, hereinafter referred to as "Grantee," whose post office address is Suite 200, 2600 Golden Gate Parkway, Naples, Florida 33942-3206, and its distributees, successors and assigns, forever, an undivided one-half interest in and to all the right, title and interest of the Grantor in and to the real property situated in the County of Maricopa, State of Arizona, described in Exhibit A attached hereto and made a part hereof.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this __ day of ________, 19__.

UNITED STATES OF AMERICA

By: ________________________

____
(Name and full title of
authorized official signing
the deed)

STATE OF ____________________

COUNTY OF ___________________

The foregoing instrument was acknowledged before me this ______ day of ______________, 19__, by ________________________.

____
Notary Public

My Commission expires:

____

(AFFIX NOTARIAL SEAL)

EXHIBIT A

DESCRIPTION OF THE INDIAN SCHOOL PROPERTY

A parcel of land in the southeast quarter of section 20, Township 2 North, Range 3 East, Gila and Salt River Meridian, City of Phoenix, Maricopa County, Arizona, more particularly described as follows:

Beginning at the ¼ section corner of sections 20 and 29, T.2 N., R.3 E., Gila and Salt River Meridian, Arizona, said point of beginning being located within the intersection of Central Avenue and Indian School Road in Phoenix, Arizona.

Thence, N.0° 10'38" E., along the north and south center line of section 20, 1352.74 feet, to the southwest corner of the property described in the quitclaim deed dated November 20, 1959, and recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, S.89° 49'22" E., 550.00 feet, along the south line to the southeast corner of said property recorded in Docket 3273, Page 412, of the Maricopa County Records.

Thence, N.0° 10'38" E., 1281.04 feet, along the east boundary of said property recorded in Docket 3273, Page 412, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 430, of the Maricopa County Records, and along the east boundary of the property recorded in Docket 3423, Page 428, of the Maricopa County Records, and along the east boundary to the northeast corner of the property recorded in Docket 1919, Page 10, of the Maricopa County Records, which corner is on the east and west center line of section 20.

Thence, S.89° 30'01" E., 1499.51 feet, along the east and west center line of section 20, to the west boundary of the property described as Tract B in the quitclaim deed dated December 28, 1955, and recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.0° 03'27" W., 577.41 feet, along the west boundary to the southwest corner of the said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records.

Thence, S.89° 25'01" E., 585.00 feet, along the south boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to the southeast corner of said tract.

Thence, N.0° 03'27" E., 578.26 feet, along the east boundary of said Tract B recorded in Docket 1837, Pages 436-443, of the Maricopa County Records, to a point on the east and west center line of section 20.

Thence, S.89° 30'01" E., 33 feet, along the east and west center line of section 20, to the ¼ section corner of sections 20 and 21.

Thence, S.0° 03'27" W., 608.60 feet, along the line between sections 20 and 21, to a point on said line.

Thence, N.89°, 24'00" W., 618.00 feet, to the northwest corner of the property transferred to the U.S. Veterans Administration by Executive Order No. 9854, dated May 16, 1947 (FR Vol. 12, No. 99, dated May 20, 1947).

Thence, S.0° 03'27" W., 2000 feet, along the west boundary to the southwest corner of said property of the U.S. Veterans Administration.

Thence, S.89° 24'00" E., 585.00 feet, along the south boundary to the southeast corner of said Veterans Administration property.

Thence, N.0° 03'27" E., 2000 feet, along the east boundary to the northeast corner of said Veterans Administration property.

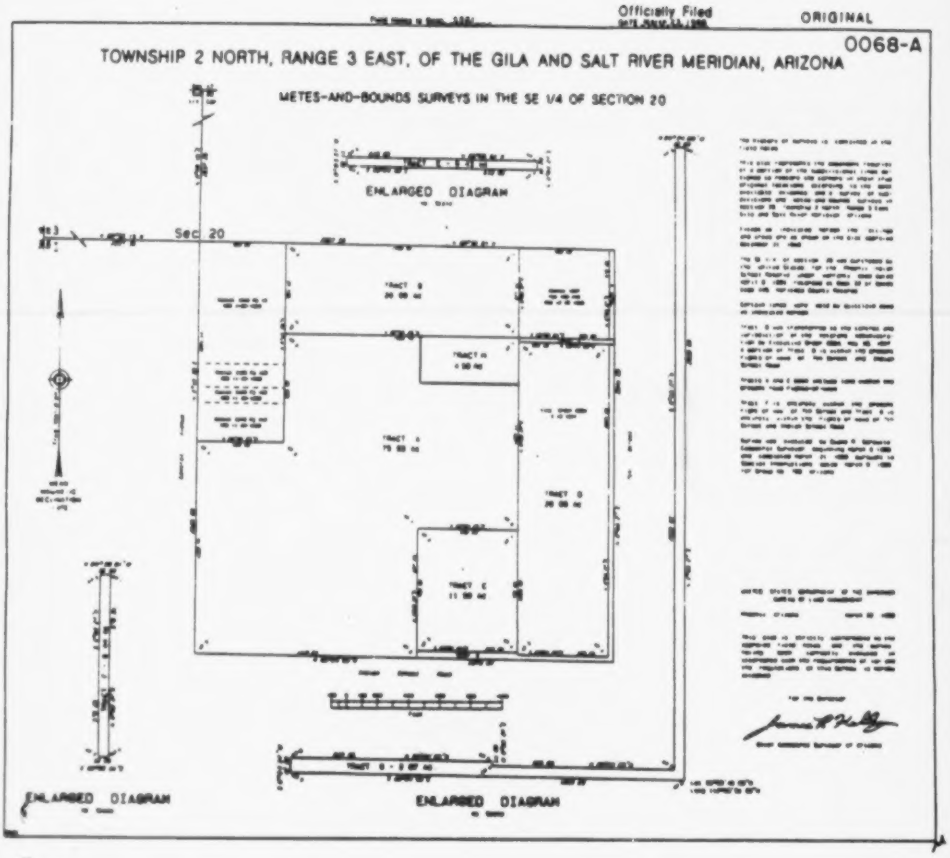
Thence, S.89° 24'00" E., 33 feet, to a point on the line between sections 20 and 29.

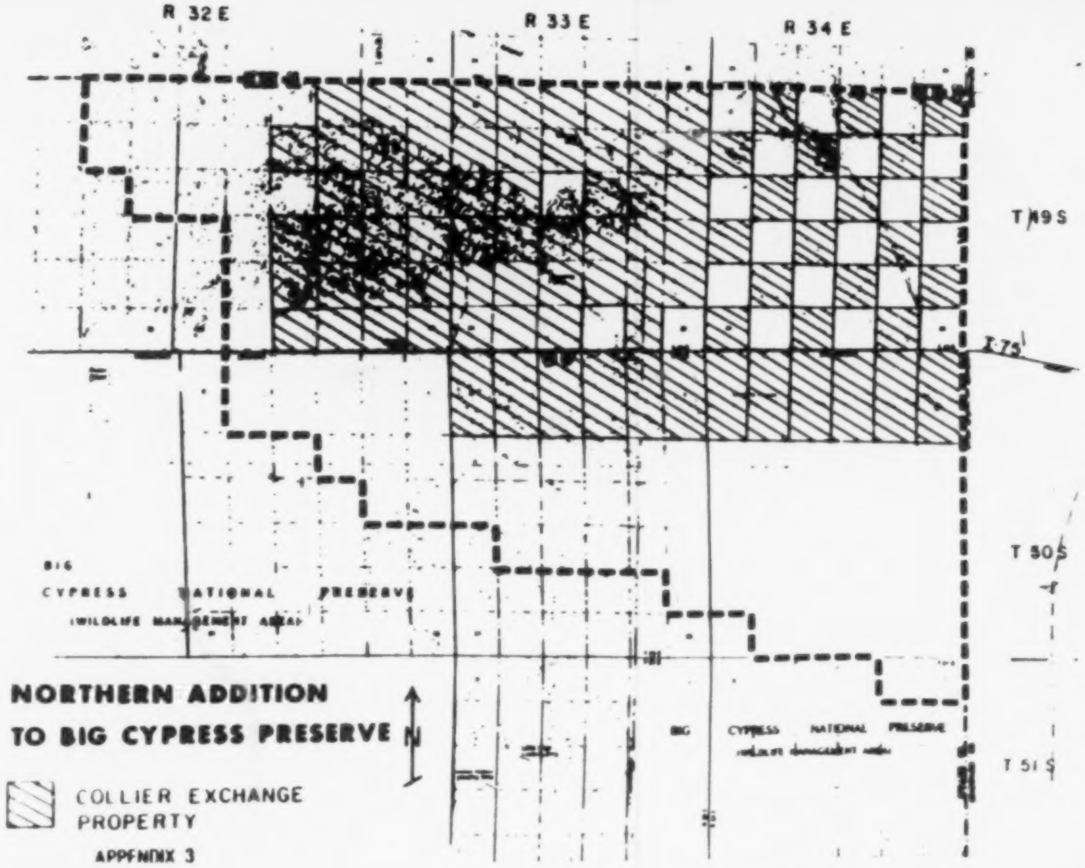
Thence, S.0° 03'27" W., along the line between sections 20 and 21, to the corner of sections 20, 21, 28, and 29, which is within the intersection of 7th Street and Indian School Road.

Thence, N.89° 24'00" W., along the line between sections 20 and 29, to the ¼ section corner of sections 20 and 29, and the point of beginning.

Said parcel of land containing 110.97 acres.

Appendix 2


Officially Filed
ORIGINAL
0068-A
TOWNSHIP 2 NORTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER MERIDIAN, ARIZONA
METES-AND-BOUNDS SURVEYS IN THE SE 1/4 OF SECTION 20
ENLARGED DIAGRAM
Sec 20
TRACT B
TRACT H
TRACT A
TRACT D
TRACT C
ENLARGED DIAGRAM
ENLARGED DIAGRAM

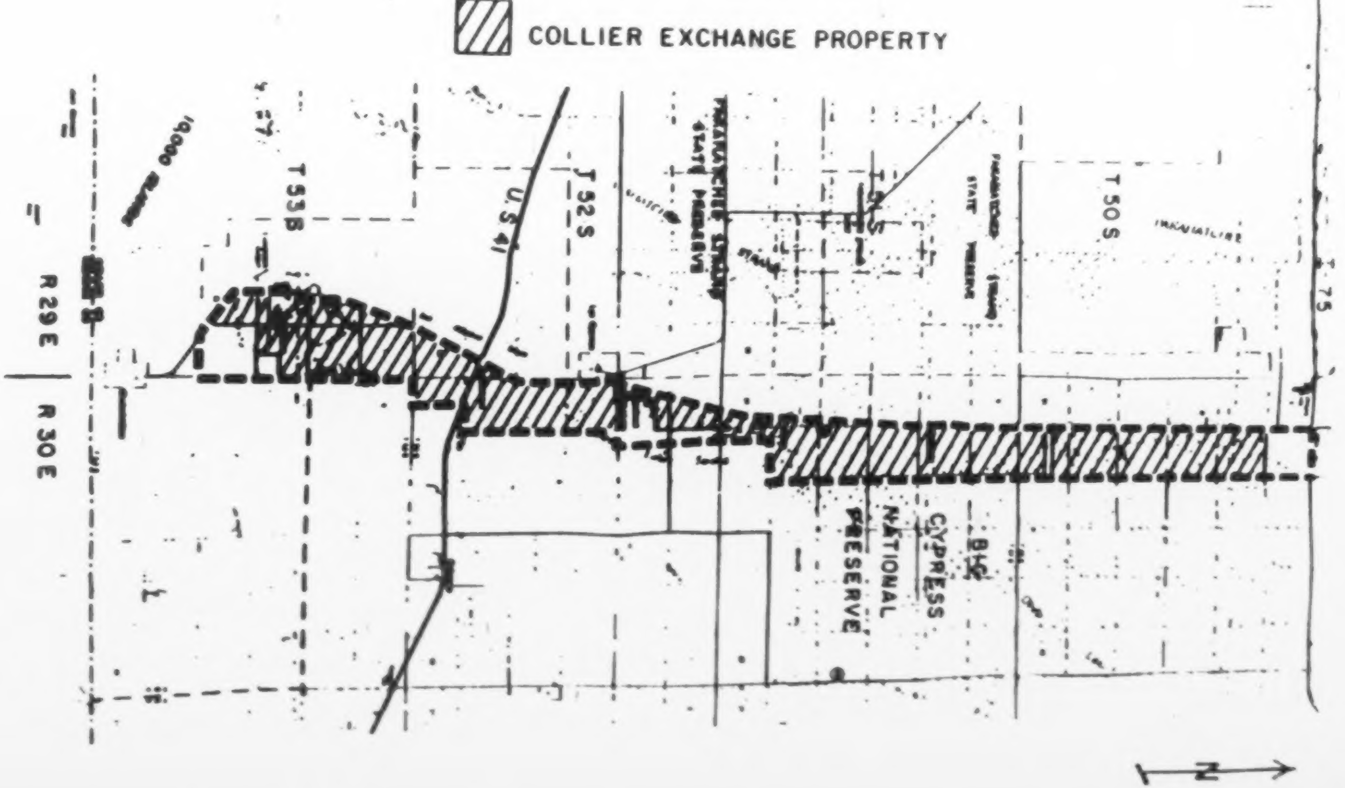

R 32 E
R 33 E
R 34 E
T 49 S
I-75
T 50 S
T 51 S
BIG CYPRESS NATIONAL PRESERVE
(WILDLIFE MANAGEMENT AREA)
BIG CYPRESS NATIONAL PRESERVE
(WILDLIFE MANAGEMENT AREA)
N
▨ COLLIER EXCHANGE PROPERTY

NORTHERN ADDITION TO BIG CYPRESS PRESERVE

APPENDIX 3

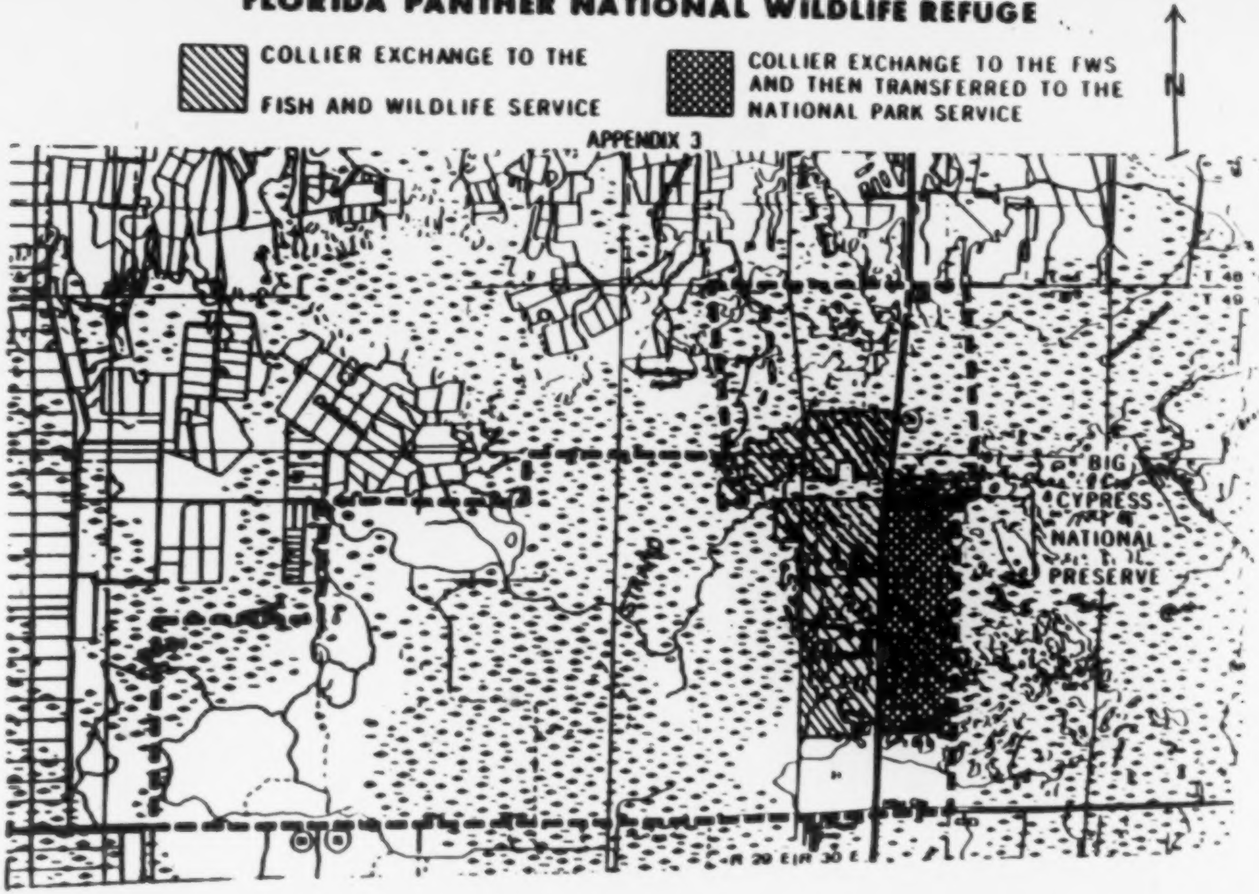
WESTERN ADDITION TO BIG CYPRESS NATIONAL PRESERVE

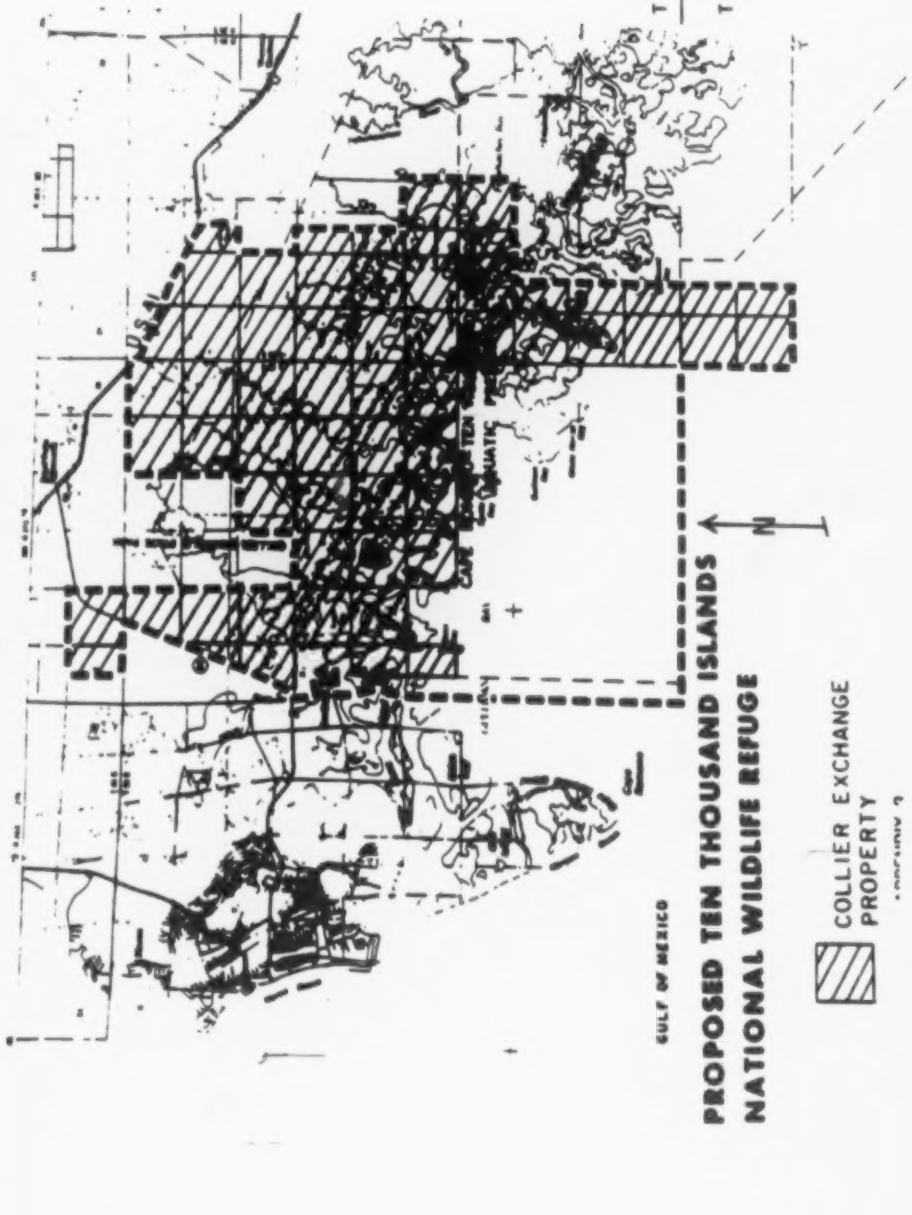
APPENDIX 3


▨ COLLIER EXCHANGE PROPERTY
I-75
T 50 S
FAKAHATCHEE STRAND STATE PRESERVE
T 51 S
FAKAHATCHEE STRAND STATE PRESERVE
BIG CYPRESS NATIONAL PRESERVE
T 52 S
U.S. 41
T 53 S
10,000 ISLANDS
R 29 E
R 30 E
N

APPENDIX 3

FLORIDA PANTHER NATIONAL WILDLIFE REFUGE


▨ COLLIER EXCHANGE TO THE FISH AND WILDLIFE SERVICE
▩ COLLIER EXCHANGE TO THE FWS AND THEN TRANSFERRED TO THE NATIONAL PARK SERVICE
N
T 48
T 49
BIG CYPRESS NATIONAL PRESERVE
R 29 E
R 30 E



PROPOSED TEN THOUSAND ISLANDS NATIONAL WILDLIFE REFUGE

GULF OF MEXICO
N
T52S
T53S
COLLIER EXCHANGE PROPERTY
CAPE ROMANO–TEN THOUSAND ISLANDS AQUATIC PRESERVE
U.S. 41

APPENDIX 4(A)
WARRANTY DEED

THIS INDENTURE, made this ______ day of __________, 19__, by and between Isabel Collier Read, Miles C. Collier, individually and as Trustee, and Barron G. Collier, II, as Trustee, joined by Collier Enterprises, a Florida partnership whose only partners are the preceding Trustees and individuals, and Collier Development Corporation, a corporation duly organized under the laws of the State of Florida and in good standing, all of whom and their respective heirs, legal representatives, successors and assigns are hereinafter collectively referred to as "Grantor," the post office address of all of whom is 3003 North Tamiami Trail, Naples, Florida 33940, and the United States of America hereinafter referred to as "Grantee," whose post office address is Washington, D.C. 20240.

WITNESSETH:

That the said Grantor, for and in consideration of the sum of $1.00, and other valuable considerations set forth in an Exchange Agreement previously executed by the Grantor and the Grantee, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, and sold to the Grantee and its assigns forever, in fee simple, all of the land in

This instrument prepared by:
(Name and address of preparer)

Collier County, Florida, described in Exhibit A attached hereto and made a part hereof (the "Lands").

The Lands are being acquired for the use and benefit of the United States by (the National Park Service/the United States Fish and Wildlife Service) of the Department of the Interior.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining to the proper use and benefit of the said Grantee and its assigns, forever, in fee simple, free and clear from all liens and encumbrances; and with respect to the banks, beds and water of any streams running through, opposite to or fronting upon said Lands, including all littoral and/or riparian rights incident thereto and to alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said Lands, the Grantor releases and quitclaims unto the Grantee and its assigns all of Grantor's right, title and interests, legal or equitable.

SUBJECT, HOWEVER, to existing easements and rights-of-way for public roads and highways, public utilities, water lines, power lines, telephone lines, railroads and pipelines, easements and rights-of-way in third parties for access, and other easements and rights-of-way of record, and further subject to oil, gas and mineral rights in third parties, if any, as are excepted, reserved or conveyed in prior instruments of record.

HOWEVER, the Grantor hereby reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all of the interest and ownership of the Grantor at the time of its execution of this conveyance in the oil and gas, and other minerals necessarily produced concomitantly with oil or gas, in, under, and that may be produced from the Lands. These previously described reserved oil, gas and mineral rights shall include, without limitation other than the provisions of Appendices 6 and 7 to the Agreement among the United States of America, Collier Enterprises, and Barron Collier Company, copies of which are attached hereto, the rights to enter on and cross over the Lands or any portion thereof (whether under common ownership or not) to ensure reasonable access to and use, for purposes of exploration, development, production, extraction, transportation and removal, of such oil, gas and minerals.

HOWEVER, the Grantor hereby further reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all present rights of access, including without limitation rights of access from and to Interstate Highway 75, State Road 84, State Road 29, Turner River Road and any other existing public or private road, to the previously described oil, gas and minerals reserved herein that are available to the Grantor under existing instruments of record, the laws of the United States, the laws of the State of Florida, or the common law.

TO HAVE AND TO HOLD the premises herein granted and conveyed with the appurtenances unto the Grantee and its assigns forever.

And the Grantor, subject to the reservations and exceptions contained herein and the interests in third parties hereinabove identified, does fully warrant the title to said Lands and will defend the same against the lawful claims of all persons whomsoever.

The term "Grantor" includes masculine, feminine, singular and/or plural parties as the context indicates.

IN WITNESS WHEREOF, Grantor has executed this deed under seal on the date aforesaid.

Signed, Sealed and Delivered in our presence.

WITNESSES:

______________________	______________________ Isabel Collier Read
______________________	______________________ Miles C. Collier, individually and as Trustee
______________________	______________________ Barron G. Collier, II, as Trustee
______________________	______________________ Collier Enterprises
______________________	______________________ Collier Development Corporation

STATE OF ______________________

COUNTY OF _____________________

The foregoing instrument was acknowledged before me this ______ day of __________________, 19__, by ____________________.

____
Notary Public

My Commission expires:

(AFFIX NOTARIAL SEAL)

Exhibit A-1
Big Cypress National Preserve Addition

(Collier Enterprises-
Paragraph 8(a))

TOWNSHIP 49 SOUTH, RANGE 32 EAST
TALLAHASSEE MERIDIAN

Section 1 - All
2 - All
3 - All
9 - All
10- All
11 - All
12 - All
13 - All
14 - All
15 - All
21 - All
22 - All
23 - All
24 - All
25 - All
26 - All
27 - All
28 - All
33 - All lying North of S.R. 84
34 - All lying North of S.R. 84
35 - All lying North of S.R. 84
36 - All lying North of S.R. 84

TOWNSHIP 49 SOUTH, RANGE 33 EAST
TALLAHASSEE MERIDIAN

Section 17- All
18 - All
19 - All
20 - The West 460 Acres
30 - All
31 - All of the West 1/2 lying North of S.R. 84

TOWNSHIP 49 SOUTH RANGE 34 EAST
TALLAHASSEE MERIDIAN

Section 1 - All
3 - All
5 - All, lying East of the center line of the L-28 Interceptor Canal;
9 - All, lying North and East of the centerline of the L-28 Interceptor Canal;
11 - All
13 - All
15 - All
23 - All
25 - All
27 - All
35 - All, lying North of SR 84;

TOWNSHIP 50 SOUTH, RANGE 33 EAST
TALLAHASSEE MERIDIAN

Section 1 - All, lying South of SR 84
2 - All, lying South of SR 84
3 - All, lying South of SR 84
4 - All, lying South of SR 84
5 - All, lying South of SR 84
6 - All, lying South of SR 84;
7 - All
8 - All
9 - All
10 - All
11 - All
12 - All

TOWNSHIP 50 SOUTH, RANGE 34 EAST
TALLAHASSEE MERIDIAN

Section 7 - All of the West 384 Acres.

Exhibit A-1
Big Cypress National Preserve Addition Strip East of State Road 29

(Collier Enterprises -
Paragraph 8 (b))

TOWNSHIP 50 SOUTH, RANGE 30 EAST
TALLAHASSEE MERIDIAN

Section 20-The East 2,310 feet of the South 1/2 of the SE 1/4, lying East of SR 29

29-All, lying East of SR 29

32-All, lying East of SR 29, less the North 1/2 of the North 1/2 of the North 1/2 of SW 1/4 and the North 1/2 of the SE 1/4 and the North 1/2 of the North 1/2 of the North 1/2 of the South 1/2 of the SE 1/4 thereof.

TOWNSHIP 51 SOUTH, RANGE 30 EAST
TALLAHASSEE MERIDIAN

Section 5- All, lying East of SR 29

7- All, lying East of SR 29

8- All, lying East of SR 29 less lands described in OR Book 158, Page 27

17-All, lying East of SR 29

18-All, lying East of SR 29

19-All, lying East of SR 29

20-All, lying East of SR 29

30-The South 1/2 of the NE 1/4 and the SE 1/4 lying East of SR 29 less the ACL right-of-way, except lands described in:

(1) OR Book 115 Page 422, OR Book 115 Page 474 and OR Book 193 Page 402 and excepting OR Book 193 Page 403;

(2) OR Book 116 Page 19; OR Book 172 Page 200; OR Book 225 Page 760; OR Book 225 Page 761; and excepting therefrom OR Book 225 Page 762;

(3) OR Book 196, Page 722 and

(4) OR Book 228 Page 277

31-All the North 1/2 of the North 1/2 of the NE 1/4 lying East of SR 29 less ACL right-of-way and less lands described in OR Book 118 Page 408; OR Book 185 Page 704; OR Book 196 Page 214

TOWNSHIP 52 SOUTH, RANGE 30 EAST
TALLAHASSEE MERIDIAN

Section 7-All of the West 1/2 and the NE 1/4, lying East of SR 29 less the ACL right-of-way, and less lands described in DB 7 Page 156; DB 9 Page 515; DB 10 Page 552; DB 5 Page 352; DB 21 Page 73; DB 21 Page 75

TOWNSHIP 53 SOUTH, RANGE 29 EAST
TALLAHASSEE MERIDIAN

Section 2-All, lying East of SR 29 less the East 973.5 feet of the NE 1/4 and less the ACL right-of-way.

11-The North 26 acres of the NE 1/4 lying East of SR 29.

14-All, lying East of SR 29 less Town of Everglades, recorded in Plat Book 1, Page 87; and less the North 858 feet of the NE 1/4 of the NE 1/4;less road right-of-way recorded in OR Book 324, Page 404 and OR Book 1059, Page 542, Public Records of Collier County, Florida.

23-All lying East of SR 29 except the Town of Everglades as recorded in Plat Book 1, Page 87 (110 Acres)

24-Portion of NW 1/4 of NW 1/4 (11.2 Acres)

MJB/jp
PHOENIX
TOWNSHIPS-2

EXHIBIT A-1

Florida Panther National Wildlife Refuge Lands

(Collier Enterprises -
Paragraph 8(c))

Township 49 South, Range 29 East
Tallahassee Meridian

Section -	13	E1/2, the N 232.45 acres

Township 49 South, Range 30 East
Tallahassee Meridian

Section -	17	All
	18	All
	19	All
	20	All
	29	All
	30	All

Exhibit A-1
Ten Thousand Islands National Wildlife Refuge (uplands)

(Collier Enterprises -
Paragraph 8 (d))

TOWNSHIP 51 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 31-the South 107 acres of the East 1/2, above mean highwate
32-the South 134 acres, lying West of S.R. 92, above mean highwater

TOWNSHIP 52 SOUTH, RANGE 27 EAST:
TALLAHASSEE MERIDIAN

Section 7 -All lying East of S.R. 92, above mean highwater
8 -All lying East of S.R. 92, above mean highwater
17-All above mean highwater
18-All lying East of S.R. 92, above mean highwater less G.L. #14,
19-All above mean highwater less G.L. #2,
20-All above mean highwater
21-All above mean highwater
28-All above mean highwater
29-All above mean highwater
30-All above mean highwater
31-All above mean highwater
33-All above mean highwater

TOWNSHIP 52 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 5 -All above mean highwater lying South and West of U.S. 4
7 -All above mean highwater
8 -All above mean highwater subject to U.S. 41 right-of-way recorded in OR Book 21, Page 226
9 -the West 1/2 of Section 9, above mean highwater lying Sou of U.S. 41,
17-All above mean highwater
18-All above mean highwater
19-All above mean highwater
20-All above mean highwater
21-the West 1/2 above mean highwater
28-the West 1/2 above mean highwater
29-All above mean highwater
30-All above mean highwater
32-All above mean highwater
33-All above mean highwater
34-the West 1/2 above mean highwater

TOWNSHIP 53 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 3-the West 1/2 above mean highwater
4-All above mean highwater
5-All above mean highwater less the West 163.5 Acres.

APPENDIX 4(B)
WARRANTY DEED

THIS INDENTURE, made this _____ day of __________, 19__, by and between Lamar Gable, Harold S. Lynton and Marguerite R. Collier as Trustees for Marguerite R. Collier under the Will of Barron Collier, Jr. deceased (probated in the Collier County Circuit Court, Probate Division, Case No. 76-33, Naples, Florida), and Lamar Gable, Harold S. Lynton and Juliet C. Sproul as Trustees for Juliet C. Sproul under said Will of Barron Collier, Jr. deceased, and Lamar Gable, Harold S. Lynton and Barron Collier III as Trustees for Barron Collier III under said Will of Barron Collier, Jr. deceased, and Barron Collier III individually, joined by Barron Collier Company, a Florida partnership whose only partners are the preceding Trustees and Barron Collier III, and joined also by Dana Collier, the wife of Barron Collier III, all of whom and their respective heirs, legal representatives, successors and assigns are hereinafter collectively referred to as "Grantor," the post office address of all of whom is 2600 Golden Gate Parkway, Suite 200, Naples, Florida 33942-3206, and the United States of America hereinafter referred to as "Grantee," whose post office address is Washington, D.C. 20240.

This instrument prepared by:
(Name and address of preparer)

WITNESSETH:

That the said Grantor, for and in consideration of the sum of $1.00, and other valuable considerations set forth in an Exchange Agreement previously executed by the Grantor and the Grantee, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, and sold to the Grantee and its assigns forever, in fee simple, all of the land in Collier County, Florida, described in Exhibit A attached hereto and made a part hereof (the "Lands").

The Lands are being acquired for the use and benefit of the United States by (the National Park Service/the United States Fish and Wildlife Service) of the Department of the Interior.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining to the proper use and benefit of the said Grantee and its assigns, forever, in fee simple, free and clear from all liens and encumbrances; and with respect to the banks, beds and water of any streams running through, opposite to or fronting upon said Lands, including all littoral and/or riparian rights incident thereto and to alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said Lands, the Grantor releases and quitclaims unto the Grantee and its assigns all of Grantor's right, title and interests, legal or equitable.

SUBJECT, HOWEVER, to existing easements and rights-of-way for public roads and highways, public utilities, water lines, power lines, telephone lines, railroads and pipelines, easements and rights-of-way in third parties for access, and other easements and rights-of-way of record, and further subject to oil, gas and mineral rights in third parties, if any, as are excepted, reserved or conveyed in prior instruments of record.

HOWEVER, the Grantor hereby reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all of the interest and ownership of the Grantor at the time of its execution of this conveyance in the oil and gas, and other minerals necessarily produced concomitantly with oil or gas, in, under, and that may be produced from the Lands. These previously described reserved oil, gas and mineral rights shall include, without limitation other than the provisions of Appendices 6 and 7 to the Agreement among the United States of America, Collier Enterprises, and Barron Collier Company, copies of which are attached hereto, the rights to enter on and cross over the Lands or any portion thereof (whether under common ownership or not) to ensure reasonable access to and use, for purposes of exploration, development, production, extraction, transportation and removal, of such oil, gas and minerals.

HOWEVER, the Grantor hereby further reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all present rights of access, including without limitation rights of access from and to Interstate Highway 75, State Road 84, State Road 29, Turner River Road and any other existing public or private road, to the previously described oil, gas and minerals reserved herein that are available to the Grantor under existing instruments of record, the laws of the United States, the laws of the State of Florida, or the common law.

TO HAVE AND TO HOLD the premises herein granted and conveyed with the appurtenances unto the Grantee and its assigns forever.

And the Grantor, subject to the reservations and exceptions contained herein and the interests in third parties hereinabove identified, does fully warrant the title to said Lands and will defend the same against the lawful claims of all persons whomsoever.

The term "Grantor" includes masculine, feminine, singular and/or plural parties as the context indicates.

IN WITNESS WHEREOF, Grantor has executed this deed under seal on the date aforesaid.

Signed, Sealed and Delivered in our presence.

WITNESSES:

Lamar Gable, as Trustee for
Marguerite R. Collier,
Juliet C. Sproul and
Barron Collier III

Harold S. Lynton, as Trustee for
Marguerite R. Collier,
Juliet C. Sproul and
Barron Collier III

Marguerite R. Collier as
Trustee

Juliet C. Sproul as Trustee

Barron Collier III, individually
and as Trustee

Dana Collier

Barron Collier Company

STATE OF ______________________

COUNTY OF ____________________

The foregoing instrument was acknowledged before me this

______ day of ___________________, 19__, by ____________________.

____

Notary Public

My Commission expires:

(AFFIX NOTARIAL SEAL)

Exhibit A-2
Big Cypress National Preserve Addition

(Barron Collier Company -
Paragraph 9(a))

TOWNSHIP 49 SOUTH, RANGE 33 EAST

Section 1- All
2- All
3- All
4- All
5- All
6- All
7- All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
8- All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
9- All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
10-All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
11-All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
12-All, subject to pipeline right-of-way as recorded in OR Book 181, Page 81, Public Records of Collier County, Florida.
13-All
14-All
15-All
20-All, less the West 460 acres thereof;
21-All
22-All
23-All
24-All
25-All
26-All
27-All
28-All
29-All
31-All of the East 1/2 lying North of SR 84
32-All, lying North of SR 84
33-All, lying North of SR 84
35-All, lying North of SR 84

TOWNSHIP 49 SOUTH, RANGE 34 EAST

Section 5-All, lying West of the center line of L-28 Interceptor Canal; subject to pipeline right-of-way recorded in OR Book 181, Page 81, and subject to an easement recorded in OR Book 238, Page 165, Public Records of Collier County, Florida

7-All, subject to pipeline right-of-way recorded in OR Book 181, Page 81, Public Records of Collier County, Florida

9-All, lying South and West of the center line of L-28 Interceptor Canal; subject to pipeline right-of-way recorded in OR Book 181, Page 81; subject to easements recorded in OR Book 238, Page 165, OR Book 1103, Page 1618 and corrective easement recorded in OR Book 1108, Page 2278, Public Records of Collier County, Florida

17-All, subject to an easement recorded in OR Book 1103, Page 1618 and corrective easement recorded in OR Book 1108, Page 2278

19-All

21-All, subject to an easement recorded in OR Book 1103, Page 1618 and corrective easement recorded in OR Book 1108, Page 2278, Public Records of Collier County, Florida

29-All, subject to an easement recorded in OR Book 1103, Page 1618 and corrective easement recorded in OR Book 1108, Page 2278, Public Records of Collier County, Florida

31-All, lying North of SR 84

33-All, lying North of SR 84, subject to an easement recorded in OR Book 1103, Page 1618 and corrective easement recorded in OR Book 1108, Page 2278, Public Records of Collier County, Florida

TOWNSHIP 50 SOUTH, RANGE 34 EAST

Section 1- All, lying South of SR 84, subject to an easement as recorded in OR Book 238, Page 165, Public Records of Collier County, Florida

Section 2- All, lying South of SR 84
3- All, lying South of SR 84
4- All, lying South of SR 84
5- All, lying South of SR 84
6- All, lying South of SR 84
7- All of the East 263 Acres
8- All
9- All
10-All
11-All
12-All

Exhibit A-2

Big Cypress National Preserve Addition Strip East of State Road 29

(Barron Collier Company -
Paragraph 9(b))

TOWNSHIP 50 SOUTH, RANGE 30 EAST

Section 8- All lying East of SR 29

17-All lying East of SR 29

30-All lying East of SR 29, less the East 2,310 feet of the South 1/2 of the SE 1/4

TOWNSHIP 51 SOUTH, RANGE 30 EAST

Section 29-All

30-All that part of the North 1/2 of the NE 1/4, lying East of SR 29

31-All lying East of SR 29, except that part of the North 1/2 of the North 1/2 of the NE 1/4, lying East of SR 29

32-The West 1/2 of the West 1/2

TOWNSHIP 52 SOUTH, RANGE 30 EAST

Section 6 All, lying east of SR 29, subject to SR 837 right-of-way as recorded in OR Book 32, Page 504 and 505

18-All, lying East of SR 29, less lands described in Deed Book 7, Page 155 and Deed Book 24, Page 524 and subject to Lee County Electric Co-op easement recorded in OR Book 353, Page 861

19-All, lying East of SR 29 subject to Lee County Electric Co-op easement recorded in OR Book 353, Page 861

30-All, lying East of SR 29 less lands described in OR Book 353 Page 864, subject to Lee County Electric Co-op easement recorded in OR Book 353, Page 861

31-All of the West 1/2

TOWNSHIP 52 SOUTH, RANGE 29 EAST

Section 28-All lying East of SR 29 and North of US 41, less lands described in OR Book 353, Page 864, subject to Lee County Electric Co-op easement recorded in OR Book 353, Page 861

36-All lying East of SR 29

TOWNSHIP 53 SOUTH, RANGE 29 EAST

Section 1-All

2-The East 973.5 feet of the NE 1/4, lying East of SR 29

11-The NE 1/4, lying East of SR 29, less the north 26 acres of the NE 1/4, lying East of SR 29 and less the Town of Everglades recorded in Plat Book 1, Page 87, and the SE 1/4, less the East 1/2 of the West 1/2 of the SE 1/4, lying South of the river, and less the Town of Everglades as recorded in Plat Book 1, Page 87

12-All

13-All, less the South 1/2 of the SE 1/4, less lands described in OR Book 202, Page 573, and less lands described in OR Book 750, Page 1199, subject to County Road right-of-way recorded in OR Book 324, Page 404

14-The North 858 feet of the NE 1/4 of the NE 1/4

24-All that part described as follows:

(1) That part of the NW 1/4 of the NW 1/4 described in OR Book 133, Page 213 and OR Book 202, Page 578.

(2) The South 1/2 of the NW 1/4, less lands described in OR Book 133, Page 215 and OR Book 202, Page 573

(3) The NE 1/4, less the NW 1/4 of the NE 1/4

(4) All of the South 1/2 thereof.

LLR/4/13/87
LR/BCC/LEGALS-3

EXHIBIT - A-2
FLORIDA PANTHER NATIONAL WILDLIFE REFUGE LANDS

(Barron Collier Company - Paragraph 9 (c))

TOWNSHIP 49 SOUTH, RANGE 29 EAST
TALLAHASSEE MERIDIAN

Section 12-N 1/2 SE 1/4 NE 1/4, E 1/2 SW 1/4 NE 1/4, SW 1/4 SW 1/4 NE 1/4, NW 1/4 SE 1/4, NW 1/4 SW 1/4 SE 1/4, S 1/2 NE 1/4 SW 1/4, N 1/2 SE 1/4 SW 1/4, N 1/2 SW 1/4 SE 1/4 SW 1/4, SW 1/4 SW 1/4, S 1/2 NW 1/4 SW 1/4, NW 1/4 NE 1/4 SW 1/4 SE 1/4

TOWNSHIP 49 SOUTH, RANGE 30 EAST, TALLAHSSEE MERIDIAN

Section 5-All that portion lying north of the south 6,200 feet being measured at right angles to the south section line, and lying west of the east 700 feet measured at right angles to the east section line lying northerly of the south 6,200 feet and lying east of SR 29 right-of-way recorded in Deed Book 9, Page 226, Public Records of Collier County, Florida and all lying West of the Atlantic Coast Line Railroad right-of-way recorded in Deed Book 4, Page 360, Public Records of Collier County, Florida, and less the South 6,200 feet being measured at right angles to the South section line.

Section 6-All of the south 816.65 feet

Section 7-NW 1/4, N 1/2 NE 1/4, W 1/2 SW 1/4 NE 1/4, SE 1/4 NE 1/4, E 1/2 NE 1/4 SE 1/4

Section 8-All, that portion lying east of SR 29 recorded in Deed Book 9, Page 227, Public Records of Collier County, Florida, less the north 3800 feet and all the NW 1/4 lying west of the Atlantic Coast Line Railroad right-of-way recorded in Deed Book 4, Page 360, Public Records of Collier County, Florida.

Section 9-All land lying south of the North 3,800 feet in the W 1/2 W 1/2 and in the W 1/2 E 1/2 W 1/2.

Exhibit A-2
Ten Thousand Islands National Wildlife Refuge (uplands)

(Barron Collier Company -
Paragraph 9 (d))

TOWNSHIP 51 SOUTH, RANGE 27 EAST
TALLAHASSE MERIDIAN

Section 31-The east 1/2, above mean highwater less the South 107 acres thereof

32-All, above mean highwater lying West of SR 92, less the South 134 acres thereof; subject to County Road right-of-way recorded in OR Book 854, Page 1550

32-All, above mean highwater lying East of SR 92, excepting all oil, gas and mineral rights reserved in deed recorded in OR Book 598, Page 546.

TOWNSHIP 54 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 1 -All above mean highwater lying south and West of US 41
2 -All above mean highwater
5 -All above mean highwater lying east of SR 92
11-All above mean highwater
12-All above mean highwater
13-All above mean highwater
14-All above mean highwater
15-All above mean highwater
22-All above mean highwater
23-All above mean highwater
24-All above mean highwater
25-All above mean highwater
26-All above mean highwater
27-All above mean highwater
34-All above mean highwater
35-All above mean highwater
36-All above mean highwater

TOWNSHIP 52 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 6-All above mean highwater lying South and West of US 41
31-All above mean highwater

TOWNSHIP 53 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 1- That portion known as Dismal Key above mean highwater

TOWNSHIP 53 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 5- The West 163.5 acres above mean highwater
6- All above mean highwater
7- All above mean highwater
8- All of the West 1/2 above mean highwater
17-All of the West 1/2 above mean highwater
18-All above mean highwater
19-All above mean highwater
20-All of the West 1/2 above mean highwater
20-All that part known as Round Key, lying in the East 1/2 above mean highwater
29-All of the West 1/2 above mean highwater
30-All above mean highwater
31-All above mean highwater
32-All of the West 1/2 above mean highwater

APPENDIX 5(A)
QUITCLAIM DEED

THIS INDENTURE, made this _____ day of _________, 19__, by and between Isabel Collier Read, Miles C. Collier, individually and as Trustee, and Barron G. Collier, II, as Trustee, joined by Collier Enterprises, a Florida partnership whose only partners are the preceding Trustees and individuals, all of whom and their respective heirs, legal representatives, successors and assigns are hereinafter collectively referred to as "Grantor," the post office address of all of whom is 3003 North Tamiami Trail, Naples, Florida 33940, and the United States of America hereinafter referred to as "Grantee," whose post office address is Washington, D.C. 20240.

WITNESSETH:

That the said Grantor, for and in consideration of the sum of $1.00, and other valuable considerations set forth in an Exchange Agreement previously executed by the Grantor and the Grantee, the receipt and sufficiency whereof are hereby acknowledged, has remised, released and quitclaimed to the Grantee and its assigns forever, all right, title, interest and claim of Grantor (except as set forth below) in and to the lands, banks, beds and water lying below mean high tide, including all littoral or riparian rights incident thereto in Collier County,

This instrument prepared by:
(Name and address of preparer)

Florida, described in Exhibit A attached hereto and made a part hereof (the "Lands").

The Lands are being acquired for the use and benefit of the United States by the United States Fish and Wildlife Service of the Department of the Interior.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining to the proper use and benefit of the said Grantee and its assigns, forever.

HOWEVER, the Grantor hereby reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all of the interest and ownership of the Grantor at the time of its execution of this conveyance in the oil and gas, and other minerals necessarily produced concomitantly with oil or gas, in, under, and that may be produced from the Lands. These previously described reserved oil, gas and mineral rights shall include, without limitation other than the provisions of Appendix 7 to the Agreement among the United States of America, Collier Enterprises, and Barron Collier Company, a copy of which is attached hereto, the rights to enter on and cross over the Lands or any portion thereof (whether under common ownership or not) to ensure reasonable access to and use, for purposes of exploration, development, production, extraction, transportation and removal, of such oil, gas and minerals.

HOWEVER, the Grantor hereby further reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all present rights of access, including without limitation rights of access from and to any existing public or private road, to the previously described oil, gas and minerals reserved herein that are available to the Grantor under existing instruments of record, the laws of the United States, the laws of the State of Florida, or the common law.

TO HAVE AND TO HOLD the premises herein granted and conveyed with the appurtenances unto the Grantee and its assigns forever.

The term "Grantor" includes masculine, feminine, singular and/or plural parties as the context indicates.

IN WITNESS WHEREOF, Grantor has executed this deed under seal on the date aforesaid.

Signed, Sealed and Delivered in our presence.

WITNESSES:

Isabel Collier Read

Miles C. Collier, individually
and as Trustee

Barron G. Collier, II,
as Trustee

Collier Enterprises

STATE OF ____________________

COUNTY OF ___________________

The foregoing instrument was acknowledged before me this

______ day of ________________, 19__, by __________________.

____
Notary Public

My Commission expires:

(AFFIX NOTARIAL SEAL)

Exhibit A-1
Ten Thousands Islands National Wildlife Refuge
(lands below the mean highwater mark)

(Collier Enterprises -
Paragraph 8 (e))

TOWNSHIP 51 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 31-The South 107 acres of the East 1/2 below mean highwater
32-The South 134 acres, lying West of S.R. 92 below mean highwater

TOWNSHIP 52 SOUTH, RANGE 27 EAST:
TALLAHASSEE MERIDIAN

Section 7 -All lying East of S.R. 92, below mean highwater
8 -All lying East of S.R. 92, below mean highwater
17-All below mean highwater
18-All lying East of S.R. 92, below mean highwater less G.L. #14,
19-All below mean highwater less G.L. #2,
20-All below mean highwater
21-All below mean highwater
28-All below mean highwater
29-All below mean highwater
30-All below mean highwater
31-All below mean highwater
33-All below mean highwater

TOWNSHIP 52 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 5 -All below mean highwater lying South and West of U.S. 41,
7 -All below mean highwater
8 -All below mean highwater subject to U.S. 41 right-of-way recorded in OR Book 21, Page 226
9 -the west 1/2 of Section 9, below mean highwater lying South of U.S. 41
17-All below mean highwater
18-All below mean highwater
19-All below mean highwater
20-All below mean highwater
21-the west 1/2 below mean highwater
28-the west 1/2 below mean highwater
29-All below mean highwater
30-All below mean highwater
32-All below mean highwater
33-All below mean highwater
34-the west 1/2 below mean highwater

TOWNSHIP 53 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 3-the west 1/2 below mean highwater
4-All below mean highwater
5-All below mean highwater less the West 163.5 Acres.

APPENDIX 5(B)

QUITCLAIM DEED

THIS INDENTURE, made this ______ day of __________, 19__, by and between Lamar Gable, Harold S. Lynton and Marguerite R. Collier as Trustees for Marguerite R. Collier under the Will of Barron Collier, Jr. deceased (probated in the Collier County Circuit Court, Probate Division, Case No. 76-33, Naples, Florida), and Lamar Gable, Harold S. Lynton and Juliet C. Sproul as Trustees for Juliet C. Sproul under said Will of Barron Collier, Jr. deceased, and Lamar Gable, Harold S. Lynton and Barron Collier III as Trustees for Barron Collier III under said Will of Barron Collier, Jr. deceased, and Barron Collier III individually, joined by Barron Collier Company, a Florida partnership whose only partners are the preceding Trustees and Barron Collier III, and joined also by Dana Collier, the wife of Barron Collier III, all of whom and their respective heirs, legal representatives, successors and assigns are hereinafter collectively referred to as "Grantor," the post office address of all of whom is 2600 Golden Gate Parkway, Suite 200, Naples, Florida 33942-3206, and the United States of America, hereinafter referred to as "Grantee," whose post office address is Washington, D.C. 20240.

This instrument prepared by:
(Name and address of preparer)

WITNESSETH:

That the said Grantor, for and in consideration of the sum of $1.00, and other valuable considerations set forth in an Exchange Agreement previously executed by the Grantor and the Grantee, the receipt and sufficiency whereof are hereby acknowledged, has remised, released and quitclaimed to the Grantee and its assigns forever, all right, title, interest and claim of Grantor (except as set forth below) in and to the lands, banks, beds and water lying below mean high tide, including all littoral or riparian rights incident thereto in Collier County, Florida, described in Exhibit A attached hereto and made a part hereof (the "Lands").

The Lands are being acquired for the use and benefit of the United States by the United States Fish and Wildlife Service of the Department of the Interior.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining to the proper use and benefit of the said Grantee and its assigns, forever.

HOWEVER, the Grantor hereby reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all of the interest and ownership of the Grantor at the time of its execution of this conveyance in the oil and gas, and other minerals necessarily produced concomitantly with oil or gas, in, under, and that may be produced from the Lands. These previously described reserved oil, gas and mineral rights shall include, without limitation other than the provisions of Appendix 7 to the Agreement among the United States of America, Collier Enterprises, and Barron Collier Company, a copy of which is attached hereto, the rights to enter on and cross over the Lands or any portion thereof (whether under common ownership or not) to ensure reasonable access to and use, for purposes of exploration, development, production, extraction, transportation and removal, of such oil, gas and minerals.

HOWEVER, the Grantor hereby further reserves and excepts from this conveyance, and hereby reserves and retains to Grantor, its heirs, successors and assigns, all present rights of access, including without limitation rights of access from and to any existing public or private road, to the previously described oil, gas and minerals reserved herein that are available to the Grantor under existing instruments of record, the laws of the United States, the laws of the State of Florida, or the common law.

TO HAVE AND TO HOLD the premises herein granted and conveyed with the appurtenances unto the Grantee and its assigns forever.

The term "Grantor" includes masculine, feminine, singular and/or plural parties as the context indicates.

IN WITNESS WHEREOF, Grantor has executed this deed under seal on the date aforesaid.

Signed, Sealed and Delivered in our presence.

WITNESSES:

Lamar Gable, as Trustee for
Marguerite R. Collier,
Juliet C. Sproul and
Barron Collier III

Harold S. Lynton, as Trustee for
Marguerite R. Collier,
Juliet C. Sproul and
Barron Collier III

Marguerite R. Collier as
Trustee

Juliet C. Sproul as Trustee

Barron Collier III, individually
and as Trustee

Barron Collier Company

STATE OF ______________________

COUNTY OF ______________________

The foregoing instrument was acknowledged before me this ______ day of ____________________, 19__, by ______________________.

____
Notary Public

My Commission expires:

(AFFIX NOTARIAL SEAL)

Exhibit A-1
Ten Thousands Islands National Wildlife Refuge
(lands below the mean highwater mark)

(Barron Collier Company -
Paragraph 9 (e))

TOWNSHIP 51 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 31-The east 1/2, below mean highwater less the South 137 acres thereof

32-All, below mean highwater lying West of SR 92, less the South 134 acres thereof; subject to County Road right-of-way recorded in OR Book 854, Page 1550

32 All, below mean highwater lying East of SR 92, excepting all oil, gas and mineral rights reserved in deed recorded in OR Book 598, Page 546.

TOWNSHIP 52 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 1- All below mean highwater lying South and West of US 41
2- All below mean highwater
5- All below mean highwater lying east of SR 92
11-All below mean highwater
12-All below mean highwater
13-All below mean highwater
14-All below mean highwater
15-All below mean highwater
22-All below mean highwater
23-All below mean highwater
24-All below mean highwater
25-All below mean highwater
26-All below mean highwater
27-All below mean highwater
34-All below mean highwater
35-All below mean highwater
36-All below mean highwater

TOWNSHIP 52 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 6- All below mean highwater lying South and West of US 41
31-All below mean highwater

TOWNSHIP 53 SOUTH, RANGE 27 EAST
TALLAHASSEE MERIDIAN

Section 1- That portion known as Dismal Key below mean highwater

TOWNSHIP 53 SOUTH, RANGE 28 EAST
TALLAHASSEE MERIDIAN

Section 5- The West 163.5 acres below mean highwater
6- All below mean highwater
7- All below mean highwater
8- All of the West 1/2 below mean highwater
17-All of the West 1/2 below mean highwater
18-All below mean highwater
19-All below mean highwater
20-All of the West 1/2 below mean highwater
20-All that part known as Round Key, lying in the East 1/2 below mean highwater
29-All of the West 1/2 below mean highwater
30-All below mean highwater
31-All below mean highwater
32-All of the West 1/2 below mean highwater

APPENDIX 6

AGREEMENT GOVERNING THE EXERCISE OF RESERVED OIL AND GAS RIGHTS OF COLLIER ENTERPRISES AND BARRON COLLIER COMPANY

A. INTRODUCTION
    1. Purpose
    2. Definitions
    3. Applicability

B. OIL AND GAS EXPLORATION, DEVELOPMENT AND PRODUCTION
    1. Plan of Operations
    2. Review and Approval of a Plan of Operations
    3. Good Faith Negotiations
    4. Commencement of Operations
    5. Amendment of a Plan of Operations
    6. Administrative Suspension of a Plan of Operations
    7. Standards Governing the Conduct of Operations
    8. Access to the Area of Operations

C. PERFORMANCE BOND

D. DAMAGES AND PENALTIES

E. TRANSFER OF INTERESTS

F. PUBLIC INSPECTION OF DOCUMENTS

G. WAIVER

A. INTRODUCTION

1. Purpose.

(a) Any operations in conjunction with the exploration for, development or production of the oil and gas interests owned or controlled by Collier Enterprises or Barron Collier Company (collectively referred to herein as "Collier") located beneath the surface of lands within the boundaries of the Big Cypress National Preserve Addition (which oil and gas interests are herein referred to as "Collier interests") shall be conducted in accordance with the procedures and standards of these stipulations, until such time as the Secretary may promulgate regulations governing such operations pursuant to the Big Cypress National Preserve Addition Act, Pub. L. 100-301, and such regulations are, by their terms, applicable to such operations, provided, that, operations in conjunction with the exploration for, development or production of oil and gas owned or controlled by Collier, which operations are subject, as of the date of execution of the Exchange Agreement, to the regulatory authority of the National Park Service with respect to the exercise of non-Federal oil and gas rights shall remain subject to such regulations as presently promulgated at 36 C.F.R. Part 9B or as subsequently amended from time to time.

(b) These stipulations are intended to ensure that operations in conjunction with the exploration for, development or production of Collier interests are conducted in a manner consistent with the purposes for which the unit was created, to prevent or minimize damage to the environment and other resources of the unit, and to ensure to the extent feasible that the unit is left unimpaired for the enjoyment of future generations.

(c) Except as provided in subparagraph (a) or the Big Cypress National Preserve Addition Act, these stipulations are binding upon the United States and upon Collier, its heirs, successors and assigns. Obligations of Collier to the United States pursuant to such stipulations shall be enforced by the United States in lieu of the exercise of authority to regulate the conduct of exploration for, development or production of Collier interests that might have otherwise been exercised by the National Park Service for the purposes described in paragraph (b) of this section A.1, and shall remain effective until such time as the Secretary may promulgate regulations as described in paragraph (a). The application of these stipulations to the conduct of operations is intended to accomplish such purposes, and further to provide for reasonable use and enjoyment of privately owned oil and gas interests to the same extent that such purposes may otherwise lawfully be accomplished without the taking of a compensable interest in property under the Constitution of the United States through the exercise of regulatory authority by the National Park Service. Accordingly, a taking of Collier interests under these stipulations shall occur only upon the enforcement of any provision of these stipulations in a manner that would result in a limitation on the use of Collier interests greater than that which would lawfully be permitted if the United States were exercising regulatory authority as described in this paragraph, provided, however, that the United States may, as an alternative to invalidation of the application of such provision or provisions to a plan of operations, acquire the interests in lands reserved by Collier, if the Secretary, in his judgment, determines that such interests are subject to, or threatened with, uses which are, or would be detrimental to the purposes for which the unit was established, consistent with the requirements of section 1 of the Act of October 11, 1974, establishing the Big Cypress National Preserve, 16 U.S.C. § 698f.

2. Definitions.

The following definitions are applicable to these stipulations:

(a) "Approved Plan of Operations" means a plan of operations which has been reviewed and found to meet the requirements for approval of a plan of operations under section B.7 and other provisions of these stipulations.

(b) "Area of operations" means that area required for surface use for the conduct of operations under a plan of operations, including roads used to gain access to the areas of operations.

(c) "Big Cypress National Preserve Addition" or "Addition" means the surface of lands that comprise the Big Cypress National Preserve Addition as designated pursuant to the Act of October 11, 1974, 16 U.S.C. § 698f, et seq., as amended.

(d) "Collier interests" means the oil and gas owned or controlled by Collier located beneath the surface of lands within the boundaries of the Big Cypress National Preserve Addition.

(e) "Cultural resources" means any property, district, site, building or structure, included on or eligible for inclusion on the National Register of Historic Places or National Registry of Historic Landmarks or any object of scientific, archeological, cultural, historical or paleontological significance.

(f) "Department" means the Department of the Interior and any of its component agencies and offices.

(g) "Development and production" means any drilling of an oil or gas well to desired depth to develop or produce existing hydrocarbons. It includes testing, completion activities, production activities and facilities, and development of related support, transport and processing facilities.

(h) "Exploration" or "exploration activities" means geological or geophysical exploration activities or both, exploratory drilling, and all related activities and logistics associated with either or both.

(i) "Exploratory drilling" means any drilling operation to test for the actual existence of oil and gas. It includes core drilling for subsurface geologic information, the drilling of any well to a depth sufficient to measure the geologic, geophysical and engineering parameters used for determining an area's oil and gas potential and the development of related support facilities, access roads and site preparation for drilling operations.

(j) "Gas" means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at normal temperature and atmospheric pressure conditions.

(k) "Geologic or geophysical exploration activities" means any surface exploration activity relating to the search for evidence of oil and gas that requires physical presence within the boundaries of a unit. It includes drilling operations necessary for placing explosive charges, seismic exploration, magnetic anomaly detection, or surface geologic sampling, and all related activities and logistics associated with either or both.

(l) "Harass" means to pursue, hunt, take, capture, molest, collect, harm, shoot or kill wildlife or attempt to engage in any of the preceding by either an intentional or negligent act or omission.

(m) "Hazardous or contaminating substances" means those substances, including, but not limited to salt water (formation waters) or any other injurious or toxic material, sediment mud with injurious toxic additives, chemical effluent, explosives or other toxic materials or substances produced or used in the conduct of operations, transportation, or on-site storage of oil and gas.

(n) "Important Resource Areas" means discrete areas of lands or waters where sensitive natural or cultural resources are known to exist. Examples of such areas include: Cypress stands, mixed hardwood swamps, sloughs, freshwater marshes, old growth pinelands, mangrove forests, hardwood hammocks, red-cockaded woodpecker colonies, Cape Sable sparrow habitat, Bald Eagle nesting sites, known Florida Panther areas, Miccosukee Indian cultural sites and archeological sites.

(o) "Natural resources" means atmospheric, hydrologic, geologic, paleontologic, floral or faunal components of the indigenous ecology.

(p) "Oil" means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquifiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(q) "Operations" means all function, work and activities within a unit in connection with exploration for, development and production of Collier interests, including: access; prospecting; exploration; surveying; preproduction development and production; gathering, on-site storage, transport or processing of petroleum products; surveillance, inspection, monitoring, or maintenance of equipment; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto performed within the boundaries of a unit, including construction of roads, pipelines or other means of access or transportation.

(r) "Operator" means ~~Collier, its~~ heirs, successors and assigns, or a person, designated in writing by Collier, who conducts or submits a plan of operations for the purpose of conducting exploration, development or production with respect to Collier interests under these stipulations or, where the context requires, the operator identified in a specific plan of operations.

(s) "Person" means any individual, firm, partnership, corporation, association, organization or agency.

(t) "Plan of operations" means a description of procedures, equipment and timing for conducting operations with respect to Collier interests under these stipulations.

(u) "Reclamation" means the restoration or rehabilitation of an area of operations so as to return the area of operations to natural conditions existing prior to implementation of the plan of operations unless other conditions are mutually agreed upon by the Regional Director, Collier and the operator.

(v) "Regional director" means the director of that Region of the National Park Service or his or her respective designees responsible for overseeing the administration of the Big Cypress National Preserve Addition.

(w) "Unit" means interests in lands within the established boundaries of the Big Cypress National Preserve Addition.

(x) "Unit manager" means the National Park Service Superintendent responsible for the administration of the Big Cypress National Preserve Addition.

(y) "Unit resources" means cultural or natural resources within the unit.

(z) "Unit values" means the purposes for which the unit was established, including but not limited to preserving, conserving and protecting: recreation opportunities for visitor enjoyment of unit resources, endangered species, air and water quality, fish and wildlife and their habitat and water flow regimes.

(aa) "Waste" means all material for discard from exploration, development or production operations including, but not limited to, refuse, fuel drums, shot wire, survey stakes, and functional or nonfunctional equipment not being used, drilling fluids and cuttings, human waste, trash and garbage, pipes, casing, explosive boxes, and other synthetic or man-made structures and equipment.

(bb) "Wildlife" means fish or wildlife or both.

3. Applicability.

These stipulations shall apply to the conduct of operations by operators for the exploration for or development and production of Collier interests located beneath the surface of lands within the boundaries of the Addition pursuant to a plan of operations submitted on or after the date of ratification by the Congress of the United States of the Agreement among the United States, Collier Enterprises and the Barron Collier Company ("Agreement"), executed ___________, 1988.

B. OIL AND GAS EXPLORATION, DEVELOPMENT AND PRODUCTION

1. Plan of Operations.

(a) No operations in connection with the exercise of Collier interests shall be conducted by an operator or other person on the surface of lands within the boundaries of the Addition except pursuant to a plan of operations which has been reviewed and approved by the Regional Director under the procedures set forth in this section B.

(b) The costs to an operator for gathering, analyzing, preparing, revising and submitting all required information as part of a plan of operations are to be borne by the operator.

(c) Prior to submission of a plan of operations, the operator and the unit manager shall hold a preliminary meeting to discuss the anticipated scope of the operations within the unit to be affected by the operations and the requirements for preparation of a plan of operations applicable to such operations. In addition, at such preliminary meeting the operator and the Regional Director may reach preliminary agreement to review the plan of operations on an expedited basis under paragraph (c) of section B.2.

(d) A plan of operations shall identify all operations that the operator intends to implement upon approval of a plan of operations and such plan of operations shall be deemed to cover all operations so identified. A plan of operations may cover operations within a single location or within multiple locations of surface facilities, pipelines and other support or logistic facilities. A plan of operations may cover either comprehensive or phased operations, provided, however, that each plan need only cover those phases or locations of operations known to or planned by the operator submitting such plan of operations. The operator may, for purposes of information, describe other future phases of operations or other possible locations related to the operations covered by the plan of operations. However, implementation of one phase of operations or of operations at a single location covered by an approved plan of operations does not imply approval of a subsequently submitted plan of operations to cover any other phase of or location for operations which phase or location is not covered by an approved plan of operations. The plan of operations may be amended, revised or supplemented to include additional development wells, production and transportation facilities, subject to the requirements for amendment of a plan of operations under subsection 5 of this section B.

(e) The plan of operations shall include information sufficient for the Regional Director to evaluate the effect of the operations on unit resources and unit values and whether the plan of operations complies with the requirements of the Agreement and these stipulations, including the standards set forth in subsection 7 of this section B. The information shall include, as appropriate, the following:

(1) The names and legal addresses of the following persons: the operator, contractors, subcontractors and telephone numbers so that these persons may be reached in an emergency; and the names and legal addresses of owner(s) or lessee(s) other than the operator;

(2) A copy of the instrument by which the operator's right to conduct operations was granted;

(3) A map or maps showing:

(A) the location of a point of reference selected by the operator within the area of operations which shows, in relation to that point, existing and planned access routes or roads to be used to gain access to the area of operations, the boundaries of surface disturbances and location of survey lines;

(B) to the greatest extent feasible the precise location and dimension of planned drilling sites, wellsite layout and surface support facilities including, but not limited to, pipelines (including planned burial depths), electrical lines or power generation equipment, tank batteries and sanitary facilities; all abandoned, temporarily abandoned, disposal, water, production and drilling wells of public record within a two-mile radius of the area of operations; transportation facilities, such as staging areas of loading docks; the lease boundaries; natural features, including strands, freshwater marshes, sloughs, streams, lakes, ponds, vegetation and topographic relief; and, the boundaries of planned surface disturbance, including any spoils or topsoil salvage piles;

(4) An estimated time schedule for operations covered by the plan of operations, the anticipated dates for commencement and completion of such operations and an estimated time schedule for related possible future phases of the operations, to the extent that the schedule for such related future phases of the operations may reasonably be anticipated;

(5) A description of the potential hazards to the environment, such as high pressure blowouts or hydrogen sulfide gas or oil spills, hydrogen sulfide gas or oil concentrations under high pressure;

(6) Geologic information, including planned drilling depths, the estimated tops of geologic markers, estimated depths at which brines of formation water, oil, gas or other minerals bearing formations are expected to be encountered, and the known nature and extent of the known deposit or reservoir to be produced;

(7) A description of planned methods of disposal of wastes and hazardous or contaminating substances and actions to be taken to use, store, control, and clean up these substances, and contingency plans for control and clean up of hazardous or contaminating substances in case of accidental spills or fires;

(8) A description of planned operations including estimates of: the numbers of individuals in crews, the number of crews, and the duration of crew presence to

conduct operations; the method of conducting operations and the equipment involved; modes of transportation and number of vehicles to be used in the operation; the operator's minimum specifications for pressure control equipment, testing procedures and frequency, and pressure rating for the equipment to be used; the type, characteristics and quantities of the circulating medium; testing, coring and logging programs to be used; casing program; setting depths of casing strings; descriptions of anticipated composition of produced oil, water, or gas and a description of the additives to be used in production; and, descriptions of transportation methods including pipelines, trucking and support supply/disposal plans;

(9) A reclamation plan, which shall include a description of the steps to be taken to achieve reclamation of the area of operations, a time schedule for such steps to the extent that such schedule may reasonably be anticipated, and identification and analysis of the effect of implementation of the reclamation plan on unit resources and unit values;

(10) A description of the unit resources and values in existence at the time of submission of the plan of operations within and directly adjacent to the area of operations, and the anticipated effects of the planned operations on such unit resources and values;

(11) A description of planned steps to be taken to avoid, minimize or mitigate adverse effects on unit resources and values including a discussion of cumulative effects of planned operations if the plan of operations covers multiple operations or locations, and a description of planned procedures for monitoring compliance with the environmental protection requirements of these stipulations and other law and regulation, as applicable;

(12) An affidavit stating that the planned operations will be in compliance with these stipulations and other applicable law and regulation or, as appropriate, evidence to that effect;

(13) A statement of the basis for the operator's belief that the planned operations are consistent with the requirements of these stipulations, including the standards set forth in the subsection 7 of this section B, and the information requirements set forth in this subsection 1; and

(14) Any additional information that the operator and the Regional Director or unit manager agree should be submitted or that the operator believes will be useful to the Regional Director in reviewing the plan of operations.

(f) In addition to meeting the information requirements set forth in paragraph (e) of this section B.1, the plan of operations must consider and discuss the unit's Statement for Management and other planning documents as furnished by the Superintendent, and activities to control, minimize or prevent damage to the recreational, biological, physical, scientific, cultural, and scenic resources of the unit, and any reclamation procedures suggested by the Superintendent.

(g) If the operator is seeking expedited review of a plan of operations pursuant to paragraph (c) of section B.2, the cover letter or top of the plan submitted must be clearly marked "Request for Expedited Review."

2. Review and Approval of a Plan of Operations.

Review of and final action with respect to a plan of operations submitted pursuant to subsection 1 of this section B shall occur pursuant to the following requirements and procedures:

(a) The Regional Director shall review and take final action with respect to a plan of operations within ninety (90) calendar days of the date such plan of operations is received by the Regional Director unless:

(1) the Regional Director, within 30 days from the date such plan of operations is received by the Regional Director,

(A) provides notice to the operator in writing that such plan of operations is inadequate to satisfy the information requirements of section B.1; and

(B) identifies the information reasonably necessary to satisfy such requirements,

in which event review and final action with respect to such plan of operations shall occur pursuant to the procedures set forth in paragraph (b) of this subsection;

(2) the Regional Director and the operator agree in writing that such review and final action shall occur within a longer period for the purpose of entering into good faith negotiations with respect to a plan of operations under subsection 3;

(3) the Regional Director determines, and so notifies the operator, that additional time is necessary to permit the Regional Director, in reviewing the plan of operations, to comply with other applicable law, Executive Orders or regulations, in which event review and final action with respect to such plan of operations shall occur within such longer time only as is reasonably necessary for the Regional Director to comply with such laws, orders or regulations; or

(4) the Regional Director agrees to the request of an operator for expedited review of such plan according to the procedures set forth in paragraph (c) of this subsection 2.

(b) If the Regional Director provides notice to the operator under paragraph (a)(1), the operator shall supply any reasonably necessary additional information and shall advise the Regional Director that the operator believes that the plan of operations contains all reasonably necessary information and is therefore complete, whereupon the Regional Director may:

(1) within thirty (30) days of receipt of such notice from the operator to the Regional Director determine that the application does not contain all reasonably necessary additional information and disapprove the plan of operations for failure to meet the standard for approval of a plan of operations specified in paragraph (a)(8) of subsection 7 of this section B; or

(2) review the application and take final action within sixty (60) days from the date that the applicant provides notification to the Regional Director that its application is complete, provided, however, that nothing herein shall preclude the Regional Director and the operator from entering into good faith negotiations under subsection 3 of this section B.

(c) Upon request of the operator, the Regional Director shall review and take final action with respect to a plan of operations on an expedited basis, unless the Regional Director notifies the operator, within ten (10) calendar days of the date of submission of such plan of operations that:

(1) the plan of operations, as submitted, does not meet the information requirements of section B.1;

(2) review cannot be completed and final action taken within thirty (30) days because the area of operations includes a surface area likely to be critical to the preservation of any threatened or endangered species or other sensitive unit resource;

(3) review of the plan of operations requires consultation with other agencies under procedures that cannot be completed within thirty (30) days; or

(4) the operations to be undertaken pursuant to such plan would result in significant surface disturbance the effects of which cannot be reviewed within thirty (30) days.

Such notice to the operator shall include a statement of the reasons why review cannot be completed on an expedited basis under this paragraph. For purposes of this paragraph, the following operations qualify for expedited review so long as the use of motorized vehicles in connection with such operations is limited to airboats, helicopters, ORV's qualifying for ORV permits and used on existing ORV trails, or other motorized vehicles using existing or designated roads:

(A) site inspection, or gathering of data on unit resources and values, in connection with the preparation of a plan of operations;

(B) surveying and/or marking (staking) of proposed routes for roads, pipelines, or geological/geophysical exploration;

(C) surface geologic studies, which means outcrop or surface sampling necessary to create maps of outcropping geology or to conduct geochemical analysis of outcrops;

(D) workover of an existing well;

(E) unforeseen repair or maintenance of structures or facilities covered by an existing plan of operations; or

(F) other activities that do not require the use of motorized vehicles other than airboats, helicopters, ORV's qualifying for ORV permits and used on existing ORV trails, or motorized vehicles using existing or designated roads.

The Regional Director shall, in good faith, provide expedited review of and final action on any plan of operations that meets the requirements of this paragraph. The operator shall, in good faith, seek expedited review only with respect to a plan of operations likely to meet the requirements of this paragraph.

(d) The review of the Regional Director under this subsection shall be for the purpose of determining whether the plan of operations meets the standards for review and approval of a plan of operations under subsection 7 of these stipulations. If a plan complies with such standards, such plan shall be approved.

(e) In taking final action with respect to a plan of operations under this section the Regional Director may:

(1) approve a plan of operations;

(2) disapprove a plan of operations upon a determination that the plan fails to comply with the standards of subsection 7; or

(3) approve a plan of operations, subject to such terms and conditions as the Regional Director determines are reasonably necessary to ensure compliance with the standards of section 7.

Approval of a plan of operations shall constitute a permit authorizing the commencement of operations consistent with the provisions of such plan of operations and approval of a plan of operations subject to terms and conditions shall constitute a permit authorizing commencement of operations consistent with such plan of operations subject to such terms and conditions.

(f) If the Regional Director disapproves a plan of operations or fails to take final action in accordance with this subsection, Collier may initiate an action in a court of competent jurisdiction seeking authorization to implement such plan. Such plan may be implemented if Collier demonstrates that the plan complies with the requirements of these stipulations.

3. Good Faith Negotiations.

At any time prior to the date upon which the Regional Director is required to take final action with respect to a plan of operations under section B.2, the Regional Director may request the operator to enter into good faith negotiations for the purpose of developing modifications to the plan of operations as may be necessary to ensure that such plan meets the standards for approval of a plan of operations under section B.7. If the operator and the Regional Director enter into such good faith negotiations, the Regional Director shall take final action within a period mutually agreed upon by the operator and the Regional Director, provided, that if no such period is mutually agreed upon the Regional Director shall take final action as otherwise required under section B.2.

4. Commencement of Operations.

If the Regional Director approves a plan of operations or approves a plan subject to terms and conditions, operations pursuant to such plan may commence upon the receipt by the Regional Director of an acceptable performance bond or security deposit in accordance with section C of these stipulations, and an affidavit of Collier or the operator stating that Collier or the operator has obtained all necessary permits required under other applicable law and regulations, provided, that, if such plan is approved subject to terms and conditions, the operator must, prior to the commencement of operations, also file with the Regional Director an affidavit stating its intent to comply with such additional terms and conditions.

5. Amendment of a Plan of Operations.

(a) A proposal to amend, whether by supplement or revision, an approved plan of operations may be made by Collier, the operator or the Regional Director to adjust the plan to new information or changed conditions, to correct oversights or to address conditions not previously contemplated by the parties as necessary to ensure compliance with the requirements of these stipulations or the economic and technological feasibility of the operations.

(b) A proposal to amend a plan of operations under paragraph (a) shall be made by notifying the appropriate party in writing of the proposed amendment and the justification therefor. The parties shall negotiate in good faith concerning any proposed amendment. Collier and the operator shall accept any proposed amendment that will not jeopardize the overall success of the plan of operations or unreasonably increase the cost of completing the plan and is otherwise consistent with requirements of the Agreement and these stipulations. The Regional Director shall accept any proposed amendment that complies with the requirements of the Agreement and these stipulations. No amendment to such a plan shall be implemented without the consent of the Regional Director.

(c) The operator may submit a proposal to amend, whether by supplement or revision, a previously filed plan of operations prior to final action by the Regional Director by notifying the Regional Director of the proposed amendment and the justification therefor. Such amendment shall be reviewed as if it were a newly proposed plan of operations submitted for review under subsection 2 of this section B, provided, however, that the Regional Director may waive such requirement if he determines that the proposal to amend such pending plan of operations can be reviewed and final action taken within the review period applicable to the pending plan of operations.

(d) In the event that the parties cannot agree, through good faith negotiations, to a proposed amendment under this subsection, such amendment may not be implemented in the absence of review and approval by the Regional Director under the procedures established in subsection 2 of this section B.

6. Administrative Suspension of a Plan of Operations.

Notwithstanding any other provision of these stipulations:

(a) if an operator violates its plan of operations, and if the violation does not pose an immediate threat either to human health and safety, or of a significant adverse effect on unit resources or unit values, the Regional Director may notify the operator in writing to correct the violation in the shortest practicable time, not to exceed thirty (30) days or such other time period as may mutually be agreed upon. If the violation is not corrected within thirty (30) days or the agreed upon time period, whichever is longer, the Regional Director may suspend the activity until the violation is corrected, provided, that, upon a showing of good cause why the violation cannot reasonably be corrected within thirty (30) days or the agreed upon time period, the Regional Director may extend this period for an additional time not to exceed ninety (90) additional days.

(b) if an operator violates its plan of operations or if an unforeseen condition develops, and if the violation or condition poses an immediate threat either to human health and safety, or of a significant adverse effect on unit resources or unit values, the Regional Director may immediately suspend operations until such time as the violation or condition is corrected.

(c) if an unforeseen condition develops that does not pose an immediate threat either to human health and safety or of a significant adverse effect on unit resource or unit values, but which the Regional Director believes will pose such a threat at some future time, the Regional Director shall notify the operator in writing of such unforeseen condition and provide recommendations to the operator for avoiding such effect. The operator and the Regional Director shall immediately enter into good faith negotiations to agree upon a means for correcting such condition. Nothing in this paragraph shall be construed to preclude the Regional Director from suspending operations under paragraph (b), in the event that such unforeseen condition poses an immediate threat either to human health and safety, or of a significant adverse effect on unit resources or unit values.

7. Standards Governing the Conduct of Operations.

(a) The Regional Director shall approve a plan of operations which meets the following requirements:

(1) Such operations shall be conducted only by persons with a legal right to conduct operations.

(2) Siting or the conduct of operations shall not be conducted in a manner that is likely to jeopardize the continued existence of any threatened or endangered species.

(3) Siting or the conduct of operations shall be contained within the area of operations so as to avoid damage to unit lands and resources adjacent to and not required for the development of the area of operations.

(4) Such operations shall use technologically feasible methods least damaging to unit resources and values within the area of operations, provided, that methods for conducting operations that are similar to oil and gas development practices used in similar habitats or ecosystems within the Big Cypress National Preserve at the time of submission of the plan of operations shall be deemed to be

technologically feasible methods least damaging to unit resources and values.

(5) Such operations shall be conducted in a manner that ensures the protection of public health and safety.

(6) Such operations may not use groundwater from a point of diversion that is within the boundaries of a unit, unless the operator shows that such use of the water is authorized under state law and that removal of the water will not significantly damage the unit resources and unit values.

(7) Reclamation plans must comply with the requirements of subparagraph (39) of paragraph (b) of this section B.7.

(8) The plan of operations shall satisfy all information requirements listed in section B.1.

(b) Compliance with the following operating standards and procedures is sufficient to comply with the general standards of paragraph (a):

(1) Operations must begin within eighteen (18) months of the date of the Regional Director's review of the applicable plan, unless the Regional Director agrees in writing to a longer period.

(2) The operator shall protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, removal or permanent damage from operations and shall be responsible for the reclamation or

restoration of any such listed items which are destroyed or damaged during the conduct of operations. Restoration or repair of damaged, removed or destroyed property must be accomplished within thirty (30) calendar days of the damage, destruction, or removal. Marred or wounded standing trees shall be treated with a commercially available, non-toxic pruning paint or wound coating. Reasonable compensation for marketable timber removed will be made to the United States within sixty (60) days of presentation of a bill by the Regional Director.

(3) The operator shall take all reasonable precautions to prevent accidents, fires, and damage to unit resources and values. Operators shall immediately notify the unit manager of any accidents involving personal injury or death, or of any fires or spills or any other accidents which damage unit resources. A written report shall follow initial notification of the unit manager within a mutually acceptable period of time.

(4) Surface operations shall at no time be conducted within 500 feet of:

(A) the high water banks of strands, freshwater marshes, sloughs, lakes, ponds or streams; or

(B) the high pool shoreline of natural or man-made impoundments. This requirement may be waived by the unit manager.

(5) No operations may occur within a one-half mile buffer zone of any Federally-owned or -controlled building, campground, interpretive or research site or other facility in which the National Park Service has invested public funds to further the purposes for which the unit was established and which is in existence at the time of the submission of the plan, unless (i) the Regional Director agrees that such operations would not significantly adversely affect such sites or facilities or visitor values or (ii) Collier or the operator can demonstrate that the United States has located interpretive or research sites and facilities so as to interfere unreasonably with operations in connection with Collier oil and gas rights.

(6) Whenever drilling operations are suspended, according to the provisions of section B.6 of these stipulations, for more than twenty-four (24) hours and less than thirty (30) calendar days, the wells shall be shut in by closing wellhead valves or blowout prevention equipment. When producing operations are suspended for thirty (30) calendar days or more, suitable plugs or other fittings acceptable to the unit manager shall be used to close the wells.

(7) The operator shall mark all operating derricks or wells in a conspicuous place with his name, the number and location of the well, and shall preserve the legibility of these markers.

(8) Fences shall be built around installations (wells, storage tanks, all high pressure facilities) to protect visitors and wildlife, unless otherwise authorized by the unit manager. Such fences shall have at least one gate of sufficient width to allow access by fire suppression equipment and shall be a design acceptable to the unit manager. Hazards within visitor use areas shall be clearly marked with warning signs acceptable to the unit manager.

(9) The operator shall prevent and remove accumulations of oil and other materials deemed to be fire hazards from the vicinity of well locations and tanks, and shall remove from the property or store in an orderly manner all scrap and other materials not in use.

(10) Any technical data which are submitted to the State, pursuant to State regulations, or to any agent of the United States shall be available to the unit manager upon request. The United States shall be bound by any requirements respecting confidentiality of such data applicable under state law and regulation.

(11) When drilling in any field where high pressures are likely to exist, the operator shall take all necessary precautions to keep the well under control at all times and shall install and maintain the proper high pressure fittings and equipment to assure proper well control. If a well becomes "wild", the operator shall take immediate steps to bring such wells under control.

(12) Oilfield brine, and all other waste and contaminating substance must be kept in the smallest practicable area, must be confined and rendered impermeable according to established industry standards and procedures so as to prevent escape as a result of percolation, rain, high water, or other causes. Such wastes must be stored and disposed of or removed from the unit as quickly as practicable in order to prevent pollution or permanent injury to the lands, waters, and resources of the unit. Disposal may be accomplished by pumping such waste or substance into a disposal well or through the annulus of the well with a closed transport and storage system.

(13) No fuel storage facilities shall be placed within wetland areas of the unit, and no vehicle refueling shall occur within such areas, unless such storage and refueling occur on the drilling pad within the area of operations.

(14) The operator must immediately notify the unit manager of any cultural resources that might be altered or destroyed by operations and shall leave such a discovery intact until permitted to proceed by the unit manager. The unit manager will evaluate the discovered resources and will notify the operator within ten (10) calendar days of action taken with respect to such discoveries. The responsibility for and cost of investigations and salvage of such cultural resources during

operations will be that of the operator, when such resources are discovered on Federally-owned or -controlled lands or waters.

(15) Hunting, fishing and trapping by the operator and its employees within a unit are prohibited during the conduct of such operations except in accordance with established rules and regulations of the unit. Work crews will be prohibited from carrying firearms in the unit while conducting operations. No dogs will be allowed at camps or any site within the area of operations.

(16) If natural surface drainage will be disrupted by surface disturbances, appropriate drainage structures shall be installed and maintained.

(17) Operators shall not alter the banks of streams, rivers or lakes during the conduct of operations.

(18) In the event that a plan of operations does not identify the precise location of planned wells within an area of operations, the Regional Director may, after site inspection and consultation with the operator, require the operator to move a well to a different location within the areas identified as potential well location sites in the plan of operations.

(19) Fill materials shall be composed of native limestone from existing quarries.

(20) Culverts shall be placed under access roads as needed to sustain flow in natural drainages and to accommodate sheet flow.

(21) A dike capable of containing at least 1.5 times the volume of crude stored on the site must be constructed around each well.

(22) Well casings protecting surface and groundwater supplies will be required for producing wells to be set consistent with the following:

(A) surface casing must be set to seal surface muds/formations (200-300 ft.);

(B) second string must be set at the top of the boulder zone (permeable unconsolidated zone);

(C) third string must be set out of the bottom of the boulder zone; and,

(D) fourth string must be set so as to reach the bottom of the well.

If a well is found to be a dry hole, the fourth string will not be necessary.

(23) Internal corrosion of well casings shall be controlled by continuous injection of chemicals and monitored by ultrasonic inspection, corrosion coupon surveys, and water sampling.

(24) Buried flow lines shall be protected against external corrosion by plastic coatings and cathodic protection devices, periodically dug up at selected points, and examined by x-rays or inspected annually.

(25) Pipelines shall cross over rather than under canals to avoid creating low spots in the flowlines which could trap water.

(26) Automatic well shutdown devices shall be required to shut off oil flows in response to pressure changes.

(27) Oil and gas wells shall have fail-safe, ball-type, remote control subsurface safety valves.

(28) Blowout preventer assemblies shall be designed to preclude "gushers" and leaks.

(29) Automatic shut-off valves shall be activated whenever a significant pressure drop is detected in a pipeline, which will come into action before 10 barrels of oil are lost.

(30) Oil spill cleanup equipment (pumps, skimmers, and absorbents) and emergency personnel shall be on-site and available for immediate mobilization.

(31) Provision shall be made for returning produced formation waters (brines) via reinjection wells or through the annulus of the well from which the water was taken. Under no conditions may salt water be released on the surface, and underground disposal of produced formation waters is

limited to zones of equal or lesser water quality than the produced waters. To assure that no salt water is released, monitoring wells shall be installed upstream and downstream from the drilling pad.

(32) Continuous gas monitoring devices shall be installed in all enclosed areas to decrease the likelihood of fire.

(33) Introduction of well products to surface resources during high water period shall be prevented.

(34) Operations shall provide for proper plugging and abandonment procedures for wells.

(35) All access roads, drill pads, and equipment shall be removed after completion of operations.

(36) No charge in excess of 100 pounds shall be detonated without the written approval of the Regional Director. All plastic flagging, stakes, other temporary markers put in place, wires, detonation caps, and other equipment shall be removed from the unit.

(37) Operations must be sited or scheduled to avoid:

(A) known archeological sites;

(B) periods of extreme or high fire danger;

(C) known sites used by threatened or endangered species. The operator will contact the unit manager or the unit manager will contact the operator immediately if either party discovers new use sites of threatened or endangered species. Operations may be rescheduled or halted as a consequence of discovering new use sites of endangered species, by mutual agreement of the Regional Director and the operator or by the Regional Director in accordance with procedures under section B.6;

(D) areas within reasonable buffer zones to minimize disturbance to sensitive wildlife which buffer zones shall be established in consultation with the unit manager;

(E) season, periods, or times of critical wildlife use, by threatened or endangered species, such as nesting, breeding, and birthing; and

(F) generating loud noises (greater than 70 decibels) when proposed near areas of critical wildlife use, by threatened or endangered species. Operations may be halted or rescheduled during sensitive wildlife use seasons, periods, or times, by mutual agreement of the Regional Director and the operator, or by the Regional Director in accordance with procedures under section B.6.

(38) To the fullest extent possible, vegetative clearings for roads, pads and other above-ground structures will be located to avoid important resource areas.

(39) The operator shall be responsible for reclamation or rehabilitation of the area of operations to the natural conditions existing prior to the commencement of operations or to such other conditions agreed to by Collier, the operator and the unit manager. In the event that the conduct of operations also results in damage to unit lands or resources adjacent to the area of operations, such lands or resources must also be reclaimed or rehabilitated in a manner that meets the requirements of this subparagraph. Reclamation must be accomplished as contemporaneously as possible with the conduct of operations or as specified in a plan of operations. A reclamation plan will be implemented for areas of operations as soon as these areas are no longer needed for operations. In conducting reclamation activities, the operator shall:

(A) remove all above-ground structures, equipment, and roads used for operations, except that such structures, equipment or roads may remain where they are to be used for continuing operations;

(B) prevent subsidence;

(C) remove all waste resulting from operations;

(D) remove or neutralize all contaminating and hazardous substances;

(E) plug and cap all non-producing wells and fill all excavations;

(F) grade to reasonably conform to the pre-existing contours of the lands within the areas of operations, where such grading will not jeopardize reclamation. Ruts and vehicles tracks will be rolled or scraped to restore the ground surface to the contour of the surrounding areas. No fill materials will be brought into the area;

(G) replace the natural topsoil necessary for revegetation. All available topsoil will be saved and stockpiled for use in reclamation. The soil stockpile will be protected during operations from losses due to run-off or erosion;

(H) reestablish native vegetative communities. Vegetative clearings will have free form, irregular lines and feathered edges;

(I) restore original hydroperiod;

(J) provide for safe movement of native wildlife; and

(K) reclaim the area of operations to a condition which does not constitute a nuisance and will not adversely affect or damage unit purposes, resources, visitor values, lands, waters, and unit management objectives.

(40) Failure to initiate or complete reclamation according to the standards of this section shall be grounds for forfeiture of all or so much of the bond or security deposit as the Regional Director determines is necessary to achieve successful reclamation in the area of operations.

(41) No access to site(s) outside of the unit for purposes unrelated to the conduct of operations within such unit under a plan of operations will be permitted across a unit unless such access is by foot, pack animal, or on an existing road designated by the unit manager or as otherwise agreed to by the operator and the unit manager. To the greatest extent possible, new gas and oil pipelines routes across Collier lands will be within existing pipeline corridors or parallel and adjacent to existing pipeline routes. To protect endangered species, the use of access roads shall be limited to use by personnel involved in the conduct of operations covered by a plan of operations or for monitoring compliance with the plan of operations. Facilities used for the transport of oil and gas shall not be used for the transport of oil and gas other than Collier interests in oil and gas, without the consent of the unit manager.

(42) A plan of operations shall indicate the types of commercial vehicles expected to use roads within a unit, administered by the unit agency, in connection with operations under such plan of operations. The operator shall take all steps reasonably necessary to ensure that no commercial vehicles other than those necessary for operations within the unit are admitted to the area of operations. Roads must be used in accordance with limitations, procedures, and requirements outlined in the plan of operations. Roads owned and administered by the United States shall be used in accordance with a posted reasonable fee schedule established by the Regional Director. An adjustment of the fees may be made at the discretion of the unit manager where a cooperative maintenance agreement is entered into with the operator.

(43) The following may be necessary in specific cases to protect important resource areas:

(A) Well spacing and directional drilling: Well sites will be located according to a 160-acre spacing pattern. Directional drilling techniques (which do not include slant drilling techniques) will be employed when multiple development wells are necessary to minimize the area of surface disturbance to the fullest extent practicable;

(B) Containerized mud systems: A closed or containerized mud system will be employed in lieu of using reserve pits to minimize surface disturbance and the risk of ground and surface water contamination;

(C) Use of existing facilities: Where possible, existing pads and access roads will be used for operations in lieu of creating new surface disturbances to develop oil and gas facilities;

(D) New access roads: All new oil and gas access roads should be located to avoid degradation of habitat used by threatened and endangered species; designed and constructed to minimize hydrologic impacts; restricted in use for the intended purpose; removed as soon as possible following its need for service, and maintained and reclaimed to discourage invasion of exotic plants;

(E) Access corridors and pipelines will be contiguous and designed so that collector lines would be located in sites used for access roads, storage tanks or tank batteries and will not be located in or through important resource areas, rookeries, alligator holes or research sites, provided, that the application of this provision shall not result in the denial of access. Access corridors will be maintained so as to avoid potential safety hazards resulting from impaired visibility and potholes and maintained and reclaimed to avoid encroachment by exotic plant species;

(F) Operators will be responsible for controlling unauthorized use of any new access road for the life of the road's purpose; and,

(G) Pipelines will be used to transport produced oil or gas. Trucking may be used to transport oil only from points in close proximity to a major road or for the purpose of pre-production testing.

(c) Operators shall be fully accountable for compliance with requirements of the plan of operations and these stipulations by all agents, assignees, contractors, designees, employees, lessees, subcontractors, and representatives thereof.

(d) The conduct or activities of persons within the boundaries of the unit in connection with the conduct of operations shall be governed by these stipulations, provided, however, that activities unrelated to such conduct or activities of operations, including but not limited to camping, hunting and other recreational activities, shall be subject to such rules and requirements as may be established from time to time by the National Park Service governing such conduct or activities within such unit.

8. Access to the Area of Operations.

The Regional Director shall have such reasonable access to the area of operations as is necessary to properly monitor activities included in the plan of operations and to ensure compliance with the plan of operations.

C. PERFORMANCE BOND

1. Prior to commencement of operations, the operator shall file with the Regional Director a suitable performance bond or security deposit with satisfactory surety, payable to an acceptable contractor assigned to conduct reclamation according to the plan of operations. The bond shall be conditioned upon faithful compliance with all applicable laws, standards and procedures in these stipulations and the plan of operations. This performance bond is in addition to and not in lieu of any bond or security deposit required by any other regulatory authorities. When bonds are to serve as security, the operator must provide a power of attorney to the Secretary or his designee.

2. In lieu of a performance bond, an operator may deposit with the Regional Director or his designee, cash, negotiable bonds of the United States Government, or other form of security acceptable under state law or regulation applicable to the activities covered by the plan of operation. Any cash deposit will be invested and the interest thereon will accrue to the operator. The cash deposit or the market value of such

securities shall be at least equal to the required sum of the bond(s).

3. If a plan of operations is revised, the Regional Director shall adjust the amount of the bond or security deposit to conform to the revised plan of operations.

4. The bond or security deposit shall be established by the Regional Director in an amount:

(a) equal to an estimated cost of completion of reclamation requirements. This figure shall be based on values for reclamation according to the suitability and restoration potential of the lands proposed for operations. Areas with a high restoration potential and therefore suitable for siting of operations (i.e., prairie, inland marshes, sloughs, and ponds) will have a minimum bonding liability of $50,000 per acre. Areas with a moderate restoration potential and therefore less suitable for siting of operations (i.e., pine forest or cypress forest) will have a minimum bonding liability of $70,000 per acre. Areas with a low restoration potential should be avoided for the siting of operations (mixed swamp forest and hammock forest) but will have a minimum bonding liability of $100,000 per acre disturbed; plus,

(b) that set by the unit manager consistent with the type of operations proposed in order to bond against:

(1) liabilities imposed under Section D; and

(2) costs of clean up; and

(3) costs of repair for damages resulting from oil spill, escape of gas, wastes, hazardous or contaminating substances, or fire caused by operations. The following schedule establishes maximum bonding liabilities for this subparagraph according to the operations proposed:

Operation Proposed	Maximum Bonding Liability
Geophysical Surveys	
a. more than one field party	$25,000
b. one field party	$ 5,000
Each Pad	$50,000
Other Operation	$50,000.

Notwithstanding any other provision of this section C, the total bonding liability per operator shall not exceed $300,000 within a unit. No further bond requirements will be collected for additional activities conducted within that unit, and the operator may substitute a blanket bond of $300,000 for all operations conducted within the unit.

(c) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until the unit manager determines that successful reclamation of the area of operations has occurred, provided, however, that such bond or surety shall be released on the sixtieth (60th) day following notification by the operator to the unit manager that reclamation has been successfully completed, unless the unit manager determines that successful reclamation has not been completed and requires that some portion of the bond or surety reasonably reflective of the cost of reclamation yet to be completed shall not be released.

D. DAMAGES AND PENALTIES

1. The operator agrees that it will save and hold harmless the United States and its employees from any damages or claims for injury or death of persons and damage or loss of property by any person or persons arising out of any acts or omissions by the operator, its agents, employees or subcontractors done in the course of operations.

2. In addition to any remedy available under section B for violation of the stipulations or a plan of operations, the operator shall be held liable for damage to unit resources resulting from the conduct of operations or from failure to comply with the Agreement of these stipulations notwithstanding the level of bond that may be required under section C.

3. Conduct of operations in violation of a plan of operations or the terms of the Agreement or these stipulations shall be cause for forfeiture of all or part of the performance bond or security deposit commensurate with the level of damage and scope of violation, provided, however, that the amount of such performance bond or security deposit shall not be a limit on the operator's liability for damage to unit resources under this section D.

E. TRANSFER OF INTERESTS

(a) Any person who receives through purchase, gift, assignment or any other means of conveyance an interest in all or part of Collier interests must notify the unit manager within thirty (30) calendar days of the completion of transfer. This notification must include: a legal description of the property; the name and legal address of the person receiving the interest; a description of the interest so conveyed; and a copy of the instrument conveying the interest.

(b) A transferor of Collier interests shall remain liable under any bond or security deposit posted by the transferer under section C and such bond or security deposit shall not be released until:

(1) the reclamation requirements and standards of these stipulations have been satisfied; or

(2) the transferee has obtained and filed a suitable performance bond or security deposit with the Regional Director which complies with the requirements of section C.

F. PUBLIC INSPECTION OF DOCUMENTS

Any document or information provided to, or otherwise acquired by, the Regional Director with respect to operations or proposed operations may be made available for public inspection at the office of the unit manager during normal business hours; provided, however, that upon request of Collier or the operator any such document or information that contains proprietary or confidential information may be withheld from public disclosure under the Freedom of Information Act and the rules and regulations thereunder or other Federal law unless Collier consents to such disclosure. To the fullest extent practicable, Collier or the operator shall identify any document it wishes to have withheld from public disclosure as proprietary and confidential at the time of submission to the Regional Director.

G. WAIVER

For good cause shown, the Regional Director in his discretion may waive in writing any provision of these stipulations which runs in favor of the United States. Any such waiver shall be limited to the express waiver provided therein and shall not be construed to provide a waiver of any provision of these stipulations not specifically set forth therein.

APPENDIX 7

PROCEDURES AND ENVIRONMENTAL STIPULATIONS GOVERNING THE EXERCISE OF OIL AND GAS RIGHTS RESERVED BY COLLIER ENTERPRISES AND BARRON COLLIER COMPANY IN UNITS OF THE NATIONAL WILDLIFE REFUGE SYSTEM

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B. REVIEW AND APPROVAL OF A PLAN OF OPERATIONS
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F. WAIVER

A. INTRODUCTION

1. Purpose

(a) Any operation in conjunction with the exploration for, development or production of the oil and gas interests (which oil and gas interests are herein referred to as "Collier interests") owned or controlled by Collier Enterprises and Barron Collier Company (collectively referred to herein as "Collier") located beneath the surface of lands within the boundaries of the Florida Panther National Wildlife Refuge or the Ten Thousand Islands National Wildlife Refuge (collectively referred to herein as "Refuges") shall be conducted in accordance with the procedures and standards of these stipulations.

(b) The purpose of these stipulations is to provide access and reasonable use of the surface of Federal lands as necessary to permit the exploration for, development and production, transportation and removal of Collier interests and to minimize adverse impacts upon the natural resources of the Refuges.

(c) These stipulations are a covenant running with the land, binding upon the United States and upon Collier, its heirs, successors and assigns. Benefits running to the United States pursuant to such stipulations shall be enforced by the United States in lieu of the exercise of any authority to regulate exploration, development or production of Collier interests that might have otherwise been exercised by the United States Fish and Wildlife Service with respect to oil and gas exploration, development or production activities including, but not limited to, any stipulations agreed to by Collier and the United States in Agreements for the Purchase of Land within the boundaries of the Florida Panther National Wildlife Refuge. The application of stipulations contained herein to the conduct of exploration, development and production activities is not intended to unduly restrain established or future oil and gas exploration, development and production nor to result in a taking of a compensable property interest of Collier, its heirs, successors and assigns, provided, however, that if the enforcement of any provision of these stipulations would result in a taking of a compensable property interest, the appropriate remedy shall be determined by mutual agreement of the parties or by decision of a court of competent jurisdiction.

2. Definitions

The following definitions are applicable to these stipulations:

(a) "Area of operations" means that area required for surface use for the conduct of operations under a plan of operations, including roads used to gain access to the areas of operations or pipeline rights of way used in connection with the transportation and removal of oil and gas.

(b) "Collier interests" means the oil and gas owned or controlled by Collier located beneath the surface of lands within the boundaries of the Refuges.

(c) "Cultural resource" means any district, site, building or structure included on or eligible for inclusion on the National Register of Historic places, or any object significant in American history, architecture, archeology, engineering, or culture.

(d) "Department" means the Department of the Interior and any of its component agencies and offices.

(e) "Development and production" means any drilling of an oil or gas well to desired depth to develop or produce existing hydrocarbons, including testing, completion activities, production activities and facilities, and development of related support, transport and processing facilities.

(f) "Exploration" or "exploration activities" means geological or geophysical exploration activities or both, exploratory drilling, and all related activities and logistics associated with either or both.

(g) "Exploratory drilling" means the drilling of any well to a depth sufficient to measure the geologic, geophysical and engineering parameters used for determining an area's oil and gas potential.

(h) "Gas" means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at normal temperature and atmospheric pressure conditions.

(i) "Geologic or geophysical exploration activities" means any surface exploration activity relating to the search for evidence of oil and gas that requires physical presence within the boundaries of a unit, including drilling operations necessary for placing explosive charges, seismic exploration, magnetic anomaly detection, or surface geologic sampling, and all related activities and logistics associated with either or both.

(j) "Harass" means to pursue, hunt, take, capture, molest, collect, harm, shoot or kill or attempt to engage in any of the preceding by either an intentional or negligent act or omission.

(k) "Hazardous substances" means petroleum, petroleum products, toxic materials, chemical effluent, explosives, or other materials which are likely to have adverse effect on the wildlife, its habitat or the environment of the Refuges.

(l) "Oil" means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquifiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(m) "Operations" means all activities related to the exploration for, development and production, and/or extraction and removal of oil and gas conducted within the boundaries of a Refuge.

(n) "Operator" means Collier, its heirs, successors and assigns, or a person, designated in writing by Collier who conducts or submits a plan of operations for the purpose of conducting exploration, development or production with respect to Collier interests under these stipulations or, where the context requires, the operator identified in a specific plan of operations.

(o) "Person" means any individual, firm, partnership, corporation, association, organization or agency.

(p) "Plan of operations" means a description of procedures for conducting operations with respect to Collier interests under these stipulations.

(q) "Reclamation" means restoring the land form as nearly as practicable to its original condition.

(r) "Regional director" means the director of the Southeast Region of the United States Fish & Wildlife Service who is responsible for overseeing the administration of the Refuges, or his authorized representative.

(s) "Waste" means all material for discard from exploration, development or production operations including, but not limited to, refuse, fuel drums, shot wire, survey tape or stakes, and functional or nonfunctional equipment not being used.

(t) "Wildlife" means fish or wildlife or both.

3. Applicability

These stipulations shall apply to the conduct of operations by operators for the exploration for, development and production or transportation and removal of Collier interests located beneath the surface of lands within the boundaries of the Refuges pursuant to a plan of operations submitted on or after the date of ratification by the Congress of the United States of the Exchange Agreement.

B. REVIEW AND APPROVAL OF A PLAN OF OPERATIONS

1. Submission of a Plan of Operations

(a) No operations in connection with the exercise of Collier interests shall be conducted by an operator or other person on the surface of lands within the boundaries of the Refuges except pursuant to a plan of operations which has been reviewed and approved by the Regional Director under the procedures set forth in this Section B.

(b) The costs incurred by an operator for gathering, analyzing, preparing, revising and submitting all required information as part of a plan of operations are to be borne by the operator.

(c) Prior to submission of a plan of operations, the operator and the unit manager may hold a preliminary meeting to discuss the anticipated scope of the operations within the Refuge and the requirements for preparation of a plan of operations applicable to such operations.

(d) A plan of operations shall identify all operations that the operator intends to implement upon conclusion of the procedures for review and approval of a plan of operations under this Section B. Any operations so identified shall be deemed to be covered by the plan. A plan of operations may cover operations within a single location or within multiple locations of surface facilities, pipelines and other support or logistic facilities. A plan of operations may cover either comprehensive or phased operations, provided, however, that each plan need only cover those phases or locations of operations known to or planned by the operator submitting such plan of operations. The plan of operations may be amended, revised or supplemented to include additional development wells, production and transportation facilities, and such other facilities or operations as may be necessary.

(e) The plan of operations shall include information sufficient for the Regional Director to determine that the operations will not cause unnecessary adverse effects on wildlife, its habitat, and other surface resources of the Refuge. The information shall include, as appropriate, the following:

(1) The names and legal addresses of the following persons: the operator, contractors, and, if known, subcontractors and telephone numbers so that these persons may be reached in an emergency;

(2) A copy of the instrument by which the operator's right to conduct operations was granted;

(3) A map or maps showing:

(A) the location of a point of reference selected by the operator within the area of operations which shows, in relation to that point, existing and proposed access routes or roads to be used to gain access to the area of operations, the boundaries of proposed surface disturbances and location of survey lines;

(B) the location and dimension of proposed drilling sites, wellsite layout and surface support facilities including, but not limited to, pipelines (including planned burial depths), electrical lines or power generation equipment, tank batteries and sanitary facilities;

(C) sources of construction materials within the area of operations including but not limited to fill material for roads, dikes and drill pads.

(4) An estimated time schedule for commencement and completion of the proposed operations;

(5) A description of the potential hazards to the environment, such as high pressure blowouts or hydrogen sulfide gas or oil spills, along with contingency plans for control of such hazards should they occur;

(6) A description of planned methods of disposal of wastes and hazardous substances;

(7) Proposed reclamation plans; and

(8) An affidavit stating that the planned operations will be in compliance with these stipulations and other applicable law and regulation.

2. Procedures for Review and Approval

(a) Within thirty (30) days from the date of receipt of a proposed plan of operations, the Regional Director shall complete a review of such proposed plan and provide in writing to the operator any comments he may have on such plan.

(b) If the Regional Director approves the proposed plan or takes no definitive action, the operator may commence operations covered by the plan immediately following the earlier of the receipt of a special use permit issued by the Regional Director approving such proposed plan or thirty (30) days after the date of receipt of the proposed plan by the Regional Director.

(c) If the Regional Director determines that operations under the proposed plan will result in anticipated unnecessary adverse effects on the Refuge and its resources which have not been adequately addressed in the plan or that aspects of the proposed plan are otherwise inconsistent with the environmental stipulations set forth in Section C, the Regional Director shall, within thirty (30) days after receipt of such proposed plan, provide written notice to the operator that the plan will not be approved. Such written notice shall include a factual statement of the basis on which the Regional Director's determination was made, and such recommended alternatives and modifications as deemed necessary to make the plan acceptable.

(d) Upon receipt of notice by the Regional Director under subsection (c), the operator shall: (1) adopt all recommendations received from the Regional Director; or, (2) respond to the Regional Director in writing, within thirty (30) days of receipt of notice under subsection (c), stating the reasons why the plan of operations as submitted will not result in unnecessary adverse effects on the Refuge and its resources or will not otherwise be inconsistent with this document, or why the Regional Director's recommended alternatives and modifications are based on erroneous information, are technically or economically infeasible, or are inconsistent with recognized safety standards or legal requirements of State or Federal law.

(e) Following the Regional Director's receipt of the response of the operator under subsection (d), the parties shall enter immediately into good faith negotiations to agree upon a plan of operations acceptable to the parties. However, unless the United States obtains an order from a court of competent jurisdiction restraining implementation of the plan of operations, the operator shall have the right to implement the plan of operations, as originally proposed or as subsequently modified by agreement.

3. Access to the Area of Operations

The Regional Director shall have reasonable access to the area of operations as is necessary to monitor activities included in the plan of operations.

4. Amendments to a Plan of Operations

A proposal to amend, supplement or revise a plan of operations may be made by the operator or the Regional Director to accommodate significantly changed conditions which either adversely affect the economic or technological feasibility of the exploration, development or production activities for oil and gas, or adversely affect the Refuge and its resources or to address significant conditions not previously contemplated by the parties which have the above effects. Such a proposal to modify or revise the plan of operations shall be made by notifying the appropriate party in writing of the proposed alteration and the justification therefor. The parties shall negotiate in good faith concerning any proposed revision.

5. Administrative Suspension of a Plan of Operations

If an operator violates its plan of operations or if an unforseen condition develops, which violation or condition results in immediate threat of unnecessary adverse impacts on the Refuge and its resources, the Regional Director may immediately suspend the operations resulting in such immediate threat until the violation or the condition is corrected. If an operator violates its plan of operations or if unforseen conditions develop not resulting in immediate threat of unnecessary adverse impacts on the Refuge and its resources, the Regional Director shall notify the operator by telephone or in person (followed by a confirmation in writing) to correct the violation in the shortest practicable time normally not to exceed thirty (30) days from the date of receipt of written notification by the operator, or some other time period agreed upon by the Regional Director and the operator. If the violation is not corrected in the time stipulated, the Regional Director may suspend the activity until the violation is corrected. Any such suspensions shall be deemed a final agency action.

C. ENVIRONMENTAL STIPULATIONS

1. Environmental Protection

All oil and gas exploration or development and production activities or activities in connection with the transportation and removal shall be conducted so as not to cause unnecessary adverse effects on the wildlife, its habitat, or the environment of the Refuge lands, and shall be subject to the stipulations set forth in subsections (b) through (e).

2. Terrestrial Environment

(a) Vehicles shall be operated in such a manner as to minimize surface damage.

(b) Exploration and production activities will be supported insofar as practicable by existing road systems and air service. The location of new roads and/or trails must be approved by the Regional Director. To the greatest extent possible, new gas and oil pipelines will be parallel and adjacent to existing pipelines to route the facility across Refuge lands.

(c) Except for stream crossings identified in the plan of operations, movement of equipment through streams located on Refuge lands is prohibited, except where no feasible and prudent alternatives exist and prior approval of the Regional Director has been given.

(d) If natural surface drainage will be disrupted by surface disturbance, appropriate drainage structures shall be installed and maintained.

(e) All reasonable precautionary measures shall be taken to prevent and suppress man-caused fires.

(f) Reclamation of disturbed surface areas shall be accomplished by the operator, in accordance with schedules and a plan set forth in the plan of operations or as subsequently approved by the Regional Director.

(g) Hunting, fishing, and trapping by the operator and its employees on Refuge lands are prohibited during the conduct of exploration or production activities. However, these activities may be pursued after the work day is over, in accordance with established Refuge and State regulations.

(h) Upon cessation of all operations, the site shall be properly abandoned in accordance with State law and all fixtures and equipment shall be removed promptly.

3. Aquatic Environment

(a) The operator shall not significantly alter the banks of streams, rivers, or lakes while conducting exploration, development and production activities. Crossing of streams, rivers, or lake banks shall utilize a low angle approach or, if appropriate, bridges. If bridges are utilized for bank protection, they shall be removed after use if they are no longer needed by the operator or Refuge.

(b) No water shall be removed from any stream, lake, river or subsurface sources except in accordance with the plan of operations.

(c) All operations shall be conducted in a manner that will not cause unnecessary adverse impacts upon the fishery resources or block or change the character or course of, or cause significant siltation or pollution of, any stream, river, pond, lake, or drainage system.

4. Human Environment

Prior to commencement of site clearing or construction in any area, the permittee shall, at its expense, obtain archaeological and/or historical site clearance from the Service and the State Historic Preservation Office. If cultural resources are discovered, the site must be treated according to the recommendation of the Service's regional archaelogist and refuge manager.

5. General

(a) All spills or leakages of any hazardous substance, fires and any other conditions which threaten the resources or the environment of Refuge lands shall be reported by the operator to the Regional Director immediately upon discovery of the condition. Other notifications shall be made by the operator as required by applicable laws.

(b) All waste material including, but not limited to, fuel drums, shot wire, litter, etc., shall be removed from Refuge lands for disposal in accordance with applicable Federal, State, and local standards.

(c) Within thirty (30) days after completion of drilling activity, a thorough, extensive clean-up must be completed which will include the removal of all trash, debris, drilling fluids, hydrocarbons, or other materials from Refuge lands. All drilling muds must either be pumped back into the formation, or removed from the area by vaccuum truck, or using an excavator, buried a minimum of eight (8') feet below the surface within the drilling site. All excavation sites, borrow pits, or slip trenches involved in road or well site construction are to be backfilled and restored to original ground levels.

(d) No fuel storage facilities shall be placed within any state owned waterbottoms located on Refuge lands, and no vehicle refueling shall occur within such areas, unless such storage and refueling occur only on the drilling pad within the area of operations.

(e) The permittee is responsible for restoring, repairing, replacing, or compensating the Federal Government for all property damaged, destroyed, lost or removed in carrying out exploration and/or development and production activities. In most instances, it will be advantageous to the operator and to the Government to restore or repair the damaged property immediately following the date of damage. Restoration or repair of damaged property must be accomplished within thirty (30) days. Compensation for timber damaged or lost will be made to the Government within thirty (30) days of presentation of a bill by the Regional Director.

(f) Any brine produced as a by-product of oil and/or gas production must be removed from the refuge or pumped into a disposal well through a closed transport and storage system (e.g., storage tanks fitted with a float-activated valve to prevent accidental overflows).

(g) A minimum distance of 200 feet shall be maintained between areas designated for storage of hydrocarbons or toxic compounds, and any adjacent lake or stream bank.

(h) Reserve pits shall be rendered impermeable according to established industry standards and procedures.

D. DAMAGES

The operator agrees that it will save and hold harmless the United States and its employees from any damages or claims for injury or death of persons and damage or loss of property by any person or persons arising out of any acts or omissions by the operator, its agents, employees or subcontractors done in the course of operations.

E. PUBLIC INSPECTION OF DOCUMENTS

Any document or information provided to, or otherwise acquired by, the Regional Director with respect to operations or proposed operations shall not be made available to the public if such document or information may be withheld from public disclosure under the Freedom of Information Act and the rules and regulations thereunder or other Federal law unless the operator consents to such disclosure.

F. WAIVER

For good cause shown, the Regional Director in his discretion may waive in writing any provision of these stipulations which runs in favor of the United States.

19 TRIBES

INTER TRIBAL COUNCIL
of
ARIZONA

MEMBER TRIBES
AK CHIN COMMUNITY
CAMP VERDE YAVAPAI APACHE
INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI TRIBE
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PAPAGO TRIBE
PASCUA YAQUI TRIBE
QUECHAN TRIBE
SALT RIVER PIMA MARICOPA
INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TONTO APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI PRESCOTT INDIAN TRIBE

Senate Select Committee on Indian Affairs
Phoenix Indian School
Public Hearing in Washington D.C.

Testimony of the

INTER TRIBAL COUNCIL OF ARIZONA
Monday, July 25, 1988

Introduction

My name is Nora Garcia. I am Chairperson of the Fort Mojave Tribe and Vice-President of the Inter Tribal Council of Arizona, an organization of 19 tribal governments in Arizona. I appreciate the opportunity to comment on the proposed disposition of the Phoenix Indian High School property. I have a written statement that I will be submitting for the record.

Background

On February 13, 1987, the Inter Tribal Council of Arizona provided testimony on its concerns regarding the closure of the Phoenix Indian High School to the House Interior Committee at hearings in Phoenix. On July 30, 1987, testimony was again presented to the Committee in Washington, D.C., that reiterated the ITCA's position on the closure of the Phoenix Indian School.

We, the Inter Tribal Council of Arizona continue to maintain our position on the Phoenix Indian School, which is that the school not be closed, but remain open for no less than 15 years, while educational, economic and social resources are developed in

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local Indian communities; and until alternative arrangements are made in the State of Arizona to meet the needs of the students and the potential students served by the school.

I. Indian Educational and Social Adolescent Care Needs

Since 1891 the Phoenix Indian High School has served tens of thousands of Indian people. The Arizona tribes insist that the school remain open because it provides a necessary educational resource, especially where no suitable alternative resources are available in local tribal communities.

Only five of the Indian reservations in Arizona have high schools located on reservations and the dropout rate among Arizona Indian youth is 36 percent according to the 1980 census.

The testimonies presented on February 13 and July 30, 1987, discussed in detail the reasons for maintaining the school and included a report entitled Tribal Perspectives on the Needs for Reservation Boarding Schools. The report was completed by the ITCA, Inc., in conjunction with the Bureau of Indian Affairs. The study provided clear and convincing evidence that there remains great need for the school.

However, if Congress and the Department of the Interior are determined that the school be closed and persist in pursuing a land exchange of the Phoenix Indian School property with other lands, then it is in our interest to identify resources to meet the educational and social welfare needs of our young people, even if these resources provide only a minimum of what is needed.

Recommendations

ITCA has given careful consideration to the critical needs of the Indian students of its nineteen member tribes. We have concluded that one means of serving social and educational needs of Indian youth would be (1) to establish a Federal trust fund which would be funded by proceeds equal to at least 45 percent of the value of the school property and (2) to transfer an undivided interest in five acres of the school property to the ITCA member tribes, with income from the property interest to be deposited into the trust fund.

In developing this proposal, we gave first priority to the need for an immediate and secure cash flow to provide supplemental adolescent care and educational programs for Indian youth. We support the establishment of a trust fund to generate cash flow.

Interest from funds deposited in the trust fund would be used for such adolescent care activities including but not limited to transportation, village or community based youth programs, supportive family services, substance abuse treatment and preventive programs, diversion programs, mental health treatment for the student's emotional support, parent effectiveness training, cultural awareness programs, counseling services, foster and shelter care, independent living, and other services identified in the July 31, 1986, study earlier mentioned.

In addition the funds would be used for supplemental educational activities including but not limited to alternative school programs, recruitment of drop-outs for school re-entry, school based day care for adolescent parents, school based truancy programs, school social workers, and village and community tutorial and remedial programs.

The funds may also be used for design, construction and renovation of shelter and group home facilities, satellite learning centers, and alternative schools.

Our second concern is the need to mitigate the impact of inflation on the purchasing power of the interest from the trust fund. For this purpose we seek beneficial interest in five acres of choice school property.

The member tribes are well aware of the long-term potential for capital appreciation of the school property. Nevertheless, we believe that to speculate in property and receive a lesser amount of cash is to speculate in the lives of our children. We choose to invest in our children today, not in property.

Thirdly, we would propose a provision that would continue the operation of the Phoenix Indian School until such time as the monetary proceeds from the sale of the school property are deposited into the Inter Tribal Trust Fund, and that adequate funds are appropriated annually to maintain a quality education and residential school program.

In the event the legislation does not include such a provision, then appropriations should be earmarked for the special supplemental education and adolescent care needs of the ITCA member tribes, until such time as income is available from the Inter Tribal Trust Fund.

Fourth, the Phoenix Indian School lands have been made generously available to the city of Phoenix in the past for public schools, parks and other purposes. As the additional, proposed free transfer of land to the City of Phoenix, the State of Arizona and the Veterans Administration directly reduces the size of the trust fund, ITCA proposes amendments that would --

(1) require the City of Phoenix to pay a reasonable amount for the 20 acres of Phoenix Indian School property to be conveyed to it for park and recreational purposes.

(2) modify provisions that would require the Veterans Administration to pay for no more than 10 acres of land for administrative and parking purposes;

(3) delete provisions related to the conveyance of school property at no cost to the State of Arizona for a veterans home and require instead that the State, City or the purchaser acquire the 4.5 acres at 1.17 million dollars per acre;

(4) assure that the trust fund for the membership of the Inter Tribal Council of Arizona remain at 95 percent of the total trust funds.

Navajo enrollment at the Phoenix Indian School for the past 17 years has averaged 6.5 percent. The enrollment of ITCA tribes has averaged more than 90 percent. If the enrollment of ITCA and Navajo students at Sherman Indian High School (California) are factored in, ITCA combined enrollment today is 20 times greater than Navajo enrollment at the two schools. (Sherman is expected to be closed in the next few years.)

Navajo on-reservation boarding resources far exceed those of the ITCA member tribes. In fact, there is unused boarding-school capacity on the Navajo reservation that could easily absorb the very small number of Navajo students attending the Phoenix and Sherman schools. There is an acute shortage of boarding facilities for ITCA tribes and it will be many years before such capacity will become available.

Navajo tribal financial resources dwarf the combined financial resources of the 19 member tribes of the Inter Tribal Council of Arizona. The Navajos have vastly more resources than are necessary to provide supplemental services to students displaced by a closure of the Phoenix Indian School.

The Navajos have proposed to Congress that they be granted a property interest in the Phoenix Indian School for long-range economic development in lieu of a trust fund to meet the needs of high school students for supplemental adolescent care and counselling.

The Navajo tribe was not granted a share in BIA school lands in Albuquerque, New Mexico--land set aside to educate Pueblo students--although Navajos attended the school. These lands were transferred to the All-Indian Pueblo Council.

If a Navajo precedent is established in the Phoenix Indian School matter, Congress must consider whether or not it would be equitable to transfer 85 percent of the Riverside, California, property or its cash value to the ITCA trust fund when the Sherman High School is closed.

II. Indian Veterans

Before World War I, most Indian people in Arizona were not legal citizens of the United States and when the United States entered the war in 1917, Indians were exempt from the draft. However, many Indian men and women voluntarily registered in the armed services and many gave their lives in defense of their homelands.

During World War II, 25,000 Indian men and women served in the United States armed forces. Many of them came from Arizona and served with highest distinction.

Students from the Phoenix Indian High School were a part of the American Indian forces. A war memorial presently stands on the Phoenix Indian High School grounds that recognizes some of these students.

Again during the Korean and Vietnam conflicts, students from the school left to participate in the military. Their honorable service to the country was a source of Indian community pride. Under the proposed legislation, the Veterans Administration will be provided 11.5 acres of Phoenix Indian School land with no obligation to pay for the land at fair market value. However, archival documents suggest that the VA hospital was allowed by the government to locate on Indian School land because there was no Indian hospital in Phoenix; the VA hospital was originally considered as a possible joint facility to serve Indian health needs.

Recommendation

The majority of reservations in Arizona are in rural areas necessitating long drives and overnite accommodations when Indian veterans seek health care services. The VA should be directed to take appropriate action at their facilities to accommodate Indian veterans traveling to cities such as Phoenix for health care services.

In addition, ITCA wishes to have the firm assurance that the war memorial monument with the names of the veterans who attended the school will be preserved with dignity on the school property. We note that paragraph 7(c) in An Agreement Among the United States of America, Collier Enterprises, Collier Development Corporation, and Barron Collier Company requires preservation of the memorial either on or off the school property.

III. Historic and Cultural Significance of the Phoenix Indian High School

Phoenix Indian High School has historic and cultural value to Indian people and to the nation as a whole.

The Phoenix Indian High School was one of the primary mechanisms through which federal Indian policy was implemented in the State of Arizona. Generations of Indian people from within the State and throughout the west attended the school and had their first significant contacts with non-Indians and with Indian people from other tribes. These contacts often developed into on-going networks and provided a basis for the development of inter-tribal educational, social and political activities. Many tribal leaders of current and previous generations received their formal schooling at the Indian school. Many Indian people met their spouses at the school. The school was also a focus for sports and cultural activities.

In the early years the curriculum was intended to assimilate Indian children into non-Indian society. Indian young people were taken away from their families and tribes. Attendance at the school was an often harsh experience for students; it became part of the shared Indian experience.

Indian students were placed in work positions in the City of Phoenix as part of the outing program at the school. These students provided considerable labor to the community for low wages; it was considered part of their 'training'. In general, the Indian School provided a significant economic benefit to the city.

The buildings, monuments and site are physical representations of the historical and cultural values of the school to Indian people. The school is located on Indian School Road, a major transportation artery of Phoenix.

Recommendations

ITCA recommends that Congress direct the Department of Interior to work closely with tribes throughout the Section 106 process of the National Historic Preservation Act, including the planning for public information activities, and that the Department of Interior undertake a study of the historical and cultural values of the Phoenix Indian School property. No buildings or portions of the property should be eliminated from the study. The study should include, as a major element, the gathering of oral history information from former students of the school.

The Council continues to recommend that sufficient land be retained by the Secretary of the Interior to serve as a site for any Phoenix Indian school building, determined through the 106 process, to be preserved for its historic and cultural values.

H.R. 5012 and the Senate companion measure provide generous allotments of the property to the State of Arizona, the City of Phoenix and the Veteran's Administration compared to the original Udall proposal. The Inter Tribal Council of Arizona believes it is appropriate that no less than five acres be set aside for the preservation of historic buildings and objects.

I thank the Committee for providing an opportunity to present testimony on the Phoenix Indian School land exchange.

STATEMENT BY CALEB ROANHORSE

EXECUTIVE DIRECTOR, NAVAJO NATION WASHINGTON OFFICE

ON

S.2420, THE PROPOSED ARIZONA-FLORIDA LAND EXCHANGE ACT

BEFORE A JOINT HEARING OF THE
SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OF THE UNITED STATES SENATE

JULY 25, 1988

Mr. Chairman, Members of the Indian Affairs and Energy and Natural Resources Committees, my name is Caleb Roanhorse, and I am Executive Director of the Navajo Nation Washington Office. On behalf of our Tribe, thank you for the opportunity to testify on S.2420, the proposed Arizona-Florida Land Exchange Act. We will submit a written statement for the record. Now I will briefly summarize our concerns.

First, the closure of Phoenix Indian School is a matter of great sadness to the Navajo Nation and the other Arizona Indian tribes who are members of the Inter-Tribal Council of Arizona. The Navajo Nation is not a member of the ITCA, and to our knowledge we are the only Arizona tribe who does not belong to ITCA.

S.2420 is a complex piece of legislation involving approximately 104 acres of prime development property. In the event the Collier family exercises the option to purchase the property under the terms of an Exchange Agreement ratified by this legislation, approximately $34.8 million will be available for deposit into two educational trust funds. We support the concept of creating separate trust funds. Section 202(e) of the bill provides that the proceeds are to be allocated between the two funds as follows: 95% of the payment shall be deposited for the benefit of those tribes belonging to the Inter-Tribal Council of Arizona, and the remaining 5% for the benefit of the Navajo Nation.

Now as to the question of equitable distribution of proceeds into the funds. With absolutely no disrespect intended to the other Arizona tribes, I must ask you to carefully consider what the Navajo Nation stands to lose by the closure of the School.

Mr. Chairman, last April the Navajo Tribal Council enacted a resolution, which will accompany my written statement, calling upon the Congress to amend the legislation before you today, such that:

1) Proceeds equalling no less than 50% of the appraised fair market value of the property, be set aside for the two trust funds; and

2) The proceeds be apportioned between these two trust funds according to the ratio which the total Arizona Indian population aged 16 and under, bears to the Navajo population similarly aged.

The Council further agreed that as an alternative to receiving its proportionate share in the form of a cash outlay to its trust fund, the Navajo Nation is prepared to negotiate with the private parties involved in the disposition of the Property, either:

1) An equity and cashflow interest in the property which would establish the Navajo Nation as a joint-venture partner in its development; or

2) Outright partition and subsequent Navajo Tribal ownership of a portion of the property.

I am sure you can understand that to us, the Phoenix Indian School represents more than a prime development property. Since 1960, more than 4,000 Navajo students have graduated from the School, and countless more attended the School earlier.

Whether or not these historical facts are important in the context of today's hearing, depends on whether you believe that existing educational opportunity is sufficient to meet the needs of the Navajo and 19 other Arizona Indian tribes. If you believe that the quality of our youngsters' education even approaches that of the surrounding non-Indian population, then you have no reason to be concerned. But I know that you, Senator McCain, and you, Senator DeConcini, recognize the enormous educational deficit we face at Navajo. I know you both understand that the elementary and secondary education of our young men and women will determine whether they go on to a life of frustration and hopelessness, or on to vocational school or college, and to self-sustaining careers benefiting their families and their tribes.

Therefore, you can certainly understand that the Navajo Nation would rather the School not close. We believe that there is a trust responsibility on the part of the Federal Government, to ensure that a high-quality, accessible elementary and secondary education is available to every young Indian. And we believe that as a minimum precondition of the closure of the School and disposition of the property, the educational needs of the Navajo and other Arizona tribes must be looked to and taken properly into account.

First, briefly consider the historic use of the School by Navajos. We believe that historic use, as well as present-day Phoenix Indian School enrollment patterns, should impact the proposed legislation and establishment of the funds. In fact, Navajo enrollment as a percentage of the total has varied widely from year to year, accounting for over one-half the School's total in the years 1960-64.

Second, we can look at recent use and enrollment. During the 1986-87 school year, 27 out of the 230 students enrolled in the School (or 13%) were Navajo. According to the Bureau of Indian Affairs, with the exception of the Papago & Pima Tribes, the Navajo Nation had the largest current enrollment of any Indian tribe.

And third, with respect to the education needs of the Navajo population today: 43% of our population is under 16 years of age, and the average age is just 17.5 years. According to the 1980 Census, Navajos represent 30,597 out of 47,217 (or 64.8%) of all Arizona Indians aged 16 or under. Furthermore, our education needs are enormous: more than 3,000 high-school age Navajos currently are not enrolled in a training program or school. The Tribe is working hard to meet the needs of this population through the development of new facilities and curricula; our need for special education facilities and programs is as acute as ever, and it will fall to the Tribal Government somehow to provide for these needs.

Before I close Mr. Chairman, I would like briefly to comment on one other provision of the bill. That is Section 202(d), which sets forth the allowable uses of the trust income. Section 202(d) presently limits those uses to supplemental educational and child welfare programs, services and activities, and the design, construction and improvement and repair of related facilities. We would request that these allowable uses be broadened to include vocational and higher education. This is because the educational needs of our population do not stop at high school graduation. We as a Tribal Government must look at the educational needs of our population holistically, and devote resources where they are needed most acutely.

Mr. Chairman, in closing, we are well aware that no legal document "binds" this Congress, or any party connected with the sale of the Phoenix Indian School property, to give the Arizona

Indian tribes a specified share of the proceeds. We appeal rather to your sense of justice and historic interpretation of the government-to-government agreements which created our tribal reservations in the first place; to look to the sale of this property as a means of furthering the Federal Government's trust obligation to provide for the educational needs of our people. Without an adequate education, our youngsters truly have no hope. Serious careers and stable incomes will be beyond their grasp. Education is truly the key to their intellectual and economic freedom, Mr. Chairman, and in asking for an equitable share of the proceeds we are asking only for a chance to move our educational standards a notch closer to those which non-Indian students, coast-to-coast in this country, today take for granted as a matter of right.

Thank you Mr. Chairman. I would be happy to answer any questions.

TESTIMONY OF PAUL PRITCHARD

PRESIDENT

NATIONAL PARKS AND CONSERVATION ASSOCIATION

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

AND

SELECT COMMITTEE ON INDIAN AFFAIRS

U.S. SENATE

CONCERNING S.2420

ON BEHALF OF

National Audubon Society
National Parks and Conservation Association
The Wilderness Society
National Wildlife Federation
Florida Audubon Society
Defenders of Wildlife
American Rivers
Florida Chapter, Wildlife Society
Fund for Animals
Florida Defenders of the Environment
Tropical Audubon Society

JULY 25, 1988

Mr. Chairman, I am Paul Pritchard, President of the National Parks and Conservation Association. I am accompanied by James Webb, Regional Director of The Wilderness Society. We are here today on behalf of National Audubon Society, National Parks and Conservation Association, The Wilderness Society, National Wildlife Federation, Florida Audubon Society, Defenders of Wildlife, American Rivers, Florida Chapter of The Wildlife Society, Fund for Animals, Florida Defenders of the Environment, and Tropical Audubon Society -- all members of the Everglades Coalition.

The legislation before you has a long history, enmeshed in the development and passage of Public Law 100-103 (S.90), authorizing the expansion of Big Cypress National Preserve. We, with other organizations in the Everglades Coalition, decided on certain policies as we began our participation in the related issues of the expansion and the "Collier Exchange," and have since adhered to them with all the consistency and energy we could muster.

First among them was that the expansion should be authorized regardless of the acquisition methodology; that authorization should not depend on the success of the proposed exchange. That aim was met when Congress passed S.90. With that passage, too, all questions about the national importance of the Florida lands involved were resolved. The urgency we felt for protection of habitats within the expansion area, and water flows to the established park and refuge units, has been reflected in vigorous action of Congress for the expansion and for acquisition in the Florida Panther National Wildlife Refuge. That sense of urgency, however, has not been entirely relieved.

Florida conservation organizations, and the national organizations that work there extensively, are aware of the speed and force with which burgeoning urban, industrial and agricultural development can assault our natural systems. Congress shared our view that regulatory efforts could not prevent degradation of the Big Cypress expansion area. You recognized in your statements, your reports and by your action, the importance of the expansion in preserving the natural heritage of the United States and the world. We wish to press our view that prompt acquisition is necessary, and that the unusual opportunity afforded by the proposed exchange should be grasped.

The tremendous growth in the region of the expansion, represented by Marco Island and a current proposal for 70,000 acres of agricultural conversion, place the entire area at hazard. There is a very real prospect of oil and gas development in the exchange lands, that would, in the absence of an authorized agreement, go unregulated by the National Park Service.

In acquiring lands in the expansion area, the United States benefits from the extensive participation of the state of Florida, and from the application of severance damages in the construction of Interstate Highway 75. Those factors, the existence of extensive holdings by the Collier companies, and the advantage those companies perceive in exchanging their holdings for the Phoenix tract, form an unparalleled program for the completion of the recently authorized park expansion and the associated wildlife refuges.

We recognize that the exchange involves the disposition of an important capital asset. Each of our organizations works for the preservation of our nation's natural resource capital, and we believe that such dispositions are not to be lightly undertaken. There is much about issues raised in S.2420 that is outside the range of our deepest knowledge. For example, we are not experts on real estate appraisals or urban land planning in Phoenix, nor on Indian education. We respect the views of that city's authorities, of the Arizona delegation and these Committees on those issues.

We do know about Florida's natural systems and their preservation, and that the United States is acquiring an important asset. We do know that the resources to be protected by the proposed exchange are worth the cost attributed to them, and that those appraisals are consonant with the best information available to public authorities in the state. In response to questions raised in the House of Representatives and elsewhere, we have carefully examined the impact on the transaction of acquisitions in tidal areas, and are satisfied that no value is reflected for lands that may be affected by Florida's sovereign interests.

We would like to draw your attention particularly to those lands, lands to be included in the Ten Thousand Islands National Wildlife Refuge. These mangrove estuaries and islands are the most biologically productive areas in south Florida, and the most directly important to the health of the Caribbean ecosystem we share. The exchange offers a chance to complete the protection of this threatened and important flank of Everglades National Park, a chance we ought not to lose.

Further objectives of the Coalition, as we dealt with the Colliers and the Department of Interior, were to assure that management authorities in the expansion would be identical to those within the 1974 boundaries, and that the proposed exchange did not bargain away authority of the National Park Service to protect surface resources in oil and gas development. Formerly proposed elements of the transaction would have done that. As it presently stands, the agreement provides interim contractual rights in the Park Service to regulate oil and gas access, extends those agreements permanently to Refuge System lands, and recognizes the right of the Park Service to extend general regulations to acquired areas. Still, there is certain language in the agreement and the proposed deeds that some believe might limit the Park Service's authority. For instance, the form of warranty deed proposed includes, with the reservation of mineral interests, access to ensure reasonable access to and use of such oil, gas and minerals, and reserves all present rights of access to oil, gas and minerals reserved that are available to the Grantor under law.

We have been assured both by the Colliers and the Department that such language does not diminish the authority of the Secretary in the exchange area from that prevailing within the 1974 boundaries of the Preserve and related to mineral interests previously reserved in acquisitions from Colliers there. We request that you make it clear that that is an objective of Congress in approving the exchange, and that you elicit a recognition, on the record, both from the Department and Colliers that no such diminution of authority is intended or achieved by the agreement or deeds.

The proposed legislation deals with Indian interests, with the Veteran's Administration, and with the city of Phoenix. A mechanism is proposed adding a competitive element in the disposition of the Phoenix land, aimed at preventing gross disparities between its cost to the Collier companies and market values that will then obtain. We ask, as you consider those matters, that you do not sacrifice the extraordinary opportunity the exchange proffers for natural resource protection and for the National Park and National Wildlife Refuge systems.

SIERRA CLUB

Grand Canyon Chapter · Arizona

Testimony of Joni Bosh
on behalf of the Grand Canyon Chapter of the Sierra Club

regarding S. 2420, the proposed Arizona Florida Land
Exchange Bill

At a Joint Hearing before the Select Committee on Indian
Affairs, the Veteran Affairs Committee and the Public Lands
Subcommittee of the Energy and Natural Resources Committee

July 25, 1988

My name is Joni Bosh. I live in Phoenix, Arizona and am presently the chairperson of the Grand Canyon Chapter of the Sierra Club and the Southwest Regional Vice President for Conservation. I want to thank you for the opportunity to testify on S. 2420.

The Grand Canyon (Arizona) Chapter of the Sierra Club has opposed this trade for more than two years because we believe it would not result in a solution that best protects the public interest. Alternatives to the specific trade authorized in S. 2420 have not received even cursory evaluations; it is, therefore, impossible to determine the real value and best use of the Phoenix Indian School property.

Because this legislation would exempt the proposed trade from normal disposition procedures, there are several important issues which should be resolved before further action is taken.

A. OTHER USES OF THE PHOENIX INDIAN SCHOOL PROPERTY

The Sierra Club has long maintained that if the school were to close, then the next best use of the land would be as public open space (see attachment 1). The Phoenix City Council's Phoenix Indian School Advisory Committee has also recommended that the site be used as public open space rather than be intensively developed (see attachment 2). The Advisory Committee strongly urged the City to investigate a number of ways to raise funds to acquire all or most of the site, understanding that the federal government would not donate the property to the City, but to date none of those alternatives have been thoroughly studied by either the City or the Interior Department. Some uses which should be considered include:

1. URBAN PARK. The 111-acre Phoenix Indian School Property is the last major undeveloped tract of land in central Phoneix, this country's ninth largest city. Our one other sizeable city park in the area sees over one million users per year, including nearly 10,000 visitors to its 63 acres on some weekends. The Indian School site is our last chance to acquire a sorely needed recreational area for now and for generations to come. With the three historic buildings on the site, this could be a premier cultural and historical park, unique in the country.

2. INDIAN EDUCATIONAL AND CULTURAL CENTER. Phoenix has the third largest population of urban-dwelling Indians in the country. While the opening of two new high schools on the reservations may take care of some high school education needs, they will not be able to accommodate students that live off-reservation or beyond the immediate school district. Even if closing the high school in Phoenix can be justified, there are many other pressing needs mentioned by Indian organizations which might be served at this site, including vocational training, social services, special tutoring, arts training and a cultural center, among others. Before such an important asset is lost, all other education and cultural needs of Indian reservation and urban dwellers should be fully assessed.

3. INDIAN ENTERPRISE ZONE. Twenty or thirty acres of the site could be developed for commercial, retail or convention uses to benefit the Indian community through income generation or to provide facilities for Indian cultural, health, educational or meeting purposes. The balance of the property could be used for public open space, which would enhance any development in the zone (see attachment 3).

These are, obviously, suggestions which have not been fully analyzed. These and others could be combined. Until the citizens of Phoenix are given a well-publicized, adequate opportunity to express their desires regarding potential disposition of the school, no possibility should be ruled out. Preliminary and informal surveys show a very high interest in and support for preserving the site for the public (see attachment 4). While we recognize that the land is a federal holding, we hope that the government will see that all interests, especially those of the people who will have to live with the results of any decision, are considered. That is one of the reasons why we have requested, and still urge, that either the City or the federal government (or both) hold hearings in Phoenix on specific proposals for using this property before irrevocable decisions are made.

B. THE VALUE OF THE PHOENIX INDIAN SCHOOL IS UNKNOWN

A May, 1988, report by the General Accounting Office said that the true value of the property could not be determined until final zoning for the property was determined (see attachment 5). This zoning determination is expected to take two to three years. The GAO report further states that "...Interior's proration of the value of the land on an average value per acre and the lack of a provision for a possible future increase in the property's value do not adequately recognize the government's interests in the Phoenix property's value...we believe Interior's appraised fair market values do not provide a basis to proceed with the exchange as it is currently proposed...". When GAO made this assessment, it did not know that the City would receive 20 acres for free, instead of 8, which will probably have even more of an effect on increasing the rest of the site's value (see page 20 of the attachment).

C. COMPETITIVE BIDDING IS DISCOURAGED

While the Sierra Club is opposed to the sale of the property for intensive development, if that decision is made, it should be done in an open, public and competitive fashion so as to maximize revenue for purchasing important conservation areas (such as the Florida lands) and other top priority acquisition targets. S. 2420 does not provide that assurance.

Although S. 2420 does not absolutely guarantee that the Phoenix Indian School property will be traded to the Colliers, there are several provisions which make it very difficult, if not virtually impossible, for any other party to bid successfully on the school land.

Only the Colliers may offer land as part of a bid; all others must offer cash entirely, enough to cover purchasing the Collier holdings in Florida ($49.4 million), the Indian School site (a minimum of $34.9 million), plus reimburse Colliers for planning and other expenses. While this may avoid additional time being spent on new appraisals, there may be other tracts of land worthy of federal acquisition which should be considered. The extra time would be time well spent.

Other bidders must come up with cash within thirty days of the final property zoning determination and subsequent notification in the Federal Register, which is a very short amount of time in which to commit a great deal of money, backed with acceptable collateral. If this exchange is approved, we agree with Representative George Miller's suggestion that the bidding period be extended to at least six months (see attachment 6).

The Colliers alone may submit a bid to match a better offer by another party and automatically win the property if they do so. This not only puts a lid on a potential bidding war, but prejudges the outcome in favor of the Colliers, even though other parties may have made an offer worth further consideration. Knowing they could easily be matched, other potential bidders may feel strongly discouraged from even trying to compete.

D. COST TO THE TAXPAYERS

S. 2420 gives the Collier Companies a three-year option to purchase the Phoenix Indian School property at 1987 prices. This would shortchange the federal treasury, as the GAO estimates that the school property would appreciate about 12 percent annually, about $40.0 million, over the next three years (also on page 20 of attachment 5).

Further, the Administration's reluctance to use Land and Water Conservation Fund (L&WCF) monies to acquire the Florida Land shifts the burden for acquisition from a fund supported by revenues from energy leasing and places it on general tax sources. We think there may be costs associated with the proposed trade that have not been fully quantified, such as the indirect costs the taxpayers might have to bear in terms of tax write-offs, tax deductions on interest payments and lost income from not determining the value of the land before it is presented for bids from the public. Perhaps the Government Accounting Office should attempt to answer those questions before a final decision is made.

By setting the minimum bid for the Phoenix Indian School property at $1.17 million per acre plus up to 65% of that amount plus other costs (see agreement between Colliers and the City of Phoenix), the Phoenix taxpayer will be forced to pay much more to acquire additional park land beyond the 20 acres allocated by S. 2420 than the property would perhaps have cost if it were to be acquired directly from the federal government.

If it is essential that the Florida lands be obtained as soon as possible to protect their integrity and the L&WCF monies be conserved to protect taxpayers, then the Interior Department should pay for the Florida lands immediately with L&WCF money, and replace the funds as parts of the Indian School are sold competitively to the highest bidder in the future, after the planning process is complete. We question if this possibility has been considered by Interior.

The provision that may limit the annual payments to the Indian Education Trust funds to a maximum of 9% per year will not allow the trust fund to maximize income. The education needs of Indians have historically been underfunded and the limitations in this bill make it more likely that Indian educational needs will have to be met with additional general fund appropriations. If this trade moves forward as written, the 30 year payment plan should be eliminated and any proceeds should be turned over to the trust funds immediately to be invested at the highest return possible.

E. VETERAN'S ADMINISTRATION NEEDS

We think the Veterans Administration's insistance on land at the Phoenix Indian School avoids the real issue of underfunding. There is already a $2.8 billion dollar backlog of construction projects at hospitals around the country. Even when projects are constructed, funds are often lacking for staffing the facilities. For example, the new surgical unit at the Prescott Veterans Administration Hospital has never been used because no funds have been appropriated to staff the unit. From information provided by the Veterans Administration last year, it appears that it would be far more constructive for the V.A. to jointly plan with the City (or the Indian community) and the State (if it choses to construct a nursing home) multi-level parking structures and replace the small one-story buildings at the north end of the hospital with larger buildings that would contain the facilities they need when the funds become available. This approach would conserve land and save money. We fear that once the 11.5 acres is turned over to the V.A. that the lack of funds for major building and expansion will prevent the needed construction from occuring and that the land will simply be paved over with asphalt for surface parking.

F. THERE ARE OTHER WAYS TO ACQUIRE THE FLORIDA LANDS

We agree that the lands recently authorized for addition to the Big Cypress National Preserve in Florida should be a top priority for acquisition, but we do not support S. 2420 as the way to accomplish that goal. The federal government should be using the money specifically set aside for conservation purposes through the L&WCF, which Congress recently reauthorized. Trading two valuable holdings to secure one may seem superficially attractive in the short run, but is counter to the spirit and intent of the L&WCF. If nothing else, this proposed trade glaringly illuminates the the desperate need for a dedicated fund.

It is also possible that other federal lands could be used to trade for the Collier's property. In Arizona we have witnessed many creative land trades by the Interior Department to bring environmentally sensitive areas into protective public ownership. Other trade options should be explored and be subject to public comment.

This legislation favors one landowner out of several who have eligible Florida property, and it trades off important urban open space for rural areas, when both deserve protection. The value of urban open space, whether a cultural and historic center, a green area, or mixed, should not be underestimated. That value was vigorously endorsed by the President's Commission on Ammericans Outdoors, which advocated the expansion of urban parks and the preservation or creation of greenspaces and greenbelts.

In summary, we would urge the Senate not to take action on this proposal until the unanswered questions have been resolved. This will entail fully exploring other alternatives, which will take more time, but we feel that it will be time well spent to ensure an outcome that is in the best public interest.

Thank you for this opportunity to testify on S. 2420.

SIERRA CLUB

Grand Canyon Chapter · Arizona

RESOLUTION

In recognition that 1) the highest and best use of the Phoenix Indian School property, should it no longer be used as a school, would be as a public park and that 2) the native american interests should be protected, the Grand Canyon Chapter supports the February, 1987, Palo Verde Group resolution, which states "the Phoenix Indian School property is the last large parcel of land in central Phoenix. It represents a unique and final opportunity to provide open space in our urban area. We recommend that this property should be used as a park."

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RESOLUTION

WHEREAS, the Phoenix Indian School Citizens Advisory Committee (Committee) convened in late 1986 to advise the Phoenix City Council Subcommittee on the Indian School (Subcommittee) about issues involved in the possible closure of the Phoenix Indian School, including such issues as community consensus on appropriate uses for the Indian School property; the views of the representatives of the Arizona Indian communities regarding whether or not the Phoenix Indian School responds to their needs; the impacts on the surrounding neighborhood of the different types of proposed uses for the Indian School property; and the long-term opportunities available to the City of Phoenix for developing public uses at the school's location; and

WHEREAS, the fifteen member committee has met at least monthly for the past year in public meetings held in conformance with the open meeting laws of this State, staffed by the Phoenix Planning Department; has met at least two times with the Subcommittee; has been advised from time-to-time by staff from the Mayor's office; and has heard from representatives of the various factions and interest groups involved in the possible disposition of the Indian School property; and

WHEREAS, Committee members have met with members of the Arizona Congressional Delegation or their representatives both in formal and informal meetings; and

WHEREAS, public hearings have been held by the House of Representatives Interior Committee, during February, 1987 in Phoenix and during July, 1987 in Washington, D.C., attended by Committee members which resulted in the Committee becoming convinced that the City of Phoenix was not going to be given the Indian School property; and

WHEREAS, the Committee held one public meeting at Central High School on January 26, 1987 which meeting was publicized and advertised and which was attended by approximately seventy-five interested citizens many of whom testified about their opinions on the possible uses of the property; and

WHEREAS, a public opinion poll was conducted by City of Phoenix staff utilizing the water bill mailings to solicit opinions which resulted in more than 2,200 responses, results showed that

(1) 29.7% voted to keep the school open,

(2) 53.9% voted to close the school,

(3) More than 1600 respondents indicated that they would be willing to financially support a park or bond issue,

(4) More than 1000 plus voted to pay $10.00 per year to finance a park, and

(5) 73% voted to use the school property for public uses such as the park or open space, theme park, historic park or cultural center, transit or parking uses, or the expansion of the Veterans Administration Medical Center; and

WHEREAS, a consulting firm was hired to assist the Committee in developing its mission, theme and objectives which recommendations were incorporated into the Committee's work schedule, and

WHEREAS, on the first anniversary of its creation, the Committee is increasingly anxious that the various possible dispositions of the property being discussed in the press and in the Mayor's office will result in the City losing its opportunity to have the Phoenix Indian School property committed to public use as favored by the Committee and the citizens of the City of Phoenix.

NOW, THEREFORE, be it resolved that the Committee urges the Subcommittee to direct staff to thoroughly review all methods or combination of methods and techniques available to the City to acquire the entire Indian School property. The options or methods reviewed should at least include, but not be limited to, the following:

(1) BOND ISSUE. Staff should analyze both the feasibility of and the funds that could be raised through bond elections.

(2) LESS THAN FULL-MARKET APPRAISALS. Since the Federal government can and has disposed of property for public purposes at other than market rates, staff should thoroughly discuss this option with the Federal government and the Arizona delegation.

(3) LAND AND WATER CONSERVATION FUND. Since the Florida Everglades are of national significance, staff should fully explore why Land and Water Conservation Fund monies are not being used for the express purpose for which they are set aside, which is to acquire non-renewable natural resources. The Committee is disturbed that Arizonans will, apparently, be paying for nationally significant lands which should be paid for by all the states, either by cash purchase of the school property or through the lost opportunity for open space in the heart of Phoenix.

(4) OTHER TRADES. The City has several other significant holdings that should be carefully assessed as potential trading stock for a portion, if not all, of the Indian School property. For example, the City of Phoenix owns an abandoned airstrip at the southwest corner of Litchfield and Bell Roads. It appears that this property can never be incorporated into the City limits and will never provide any beneficial use to the City. Staff should research if there are other parcels that the City owns that could also be used in a trade.

(5) LAND TRUST. Considering the minimal publicity the closure of the Phoenix Indian School has received, the degree of

public support for open space (and the unconfirmed offers of monies to help acquire the property), it is strongly suggested that a citizen's land trust could be formed and be successful. The amounts that such a trust could raise should be objectively calculated and the mechanics of developing a trust worked out.

(6) TAX. Based on the support expressed by those surveyed, it is not unrealistic to evaluate instituting a tax to finance acquisition of the Indian School property.

(7) COOPERATIVE MANAGEMENT WITH OTHER FEDERAL AND LOCAL PUBLIC AGENCIES. The Indian School property contains several historic buildings and memorials that should be preserved within the City. The history of the Phoenix Indian School, both its positive and negative elements, ties in with the City's Pueblo Grande Park and with the many other parks and monuments that preserve remains of ancient Indian cultures in the Southwest. It would be a natural joint venture to work with the National Park Service to create a visitors center at the Indian School site, leaving some of the property in Federal ownership. A visitors center in one of the historic buildings could provide not only interpretation of the school and the people who attended it, but offer information on art centers, festivals, monuments and other Indian sites in Arizona and the Southwest. This should be investigated with the appropriate region of the National Park Service.

Staff should also evaluate the potential three-way land trades that would involve one or several Federal land management agencies, such as the Bureau of Land Management or the Forest Service. The BLM recently concluded a successful multi-party trade to acquire the San Pedro River in southern Arizona. It may be possible to develop another trade to acquire part or all of the Indian School property.

Further, the Committee urges that staff discuss cooperative planning with the Veterans Administration and explore the possibility of joint uses of any needed facilities to try to reduce the amount of acres the hospital requires.

(8) INDIAN SOCIAL SERVICE NEEDS. The City must consider the pressing social service needs of the Indian Communities. For example, the Committee has learned that the Indian communities lack funds for both education and a social service/substance abuse center in Phoenix. Staff should research if the City can assist the communities in finding an appropriate site for such a service center. The City should investigate if it has any holdings near the Phoenix Indian Hospital on 16th Street and Indian School Road or any other holdings elsewhere which might serve such purposes. It might also be possible to acquire privately-held lands near the Indian Hospital.

(9) INDIAN FREE ENTERPRISE ZONE. As an alternative, the City should investigate the feasibility of creating a model free

enterprise zone in cooperation with the Federal government on a modest portion of the property leaving the remainder as open space. It is conceivable that a free enterprize zone project next to a major amenity such as a park would be very attractive to businesses and, over the long term, create far more income for the Indian communities than a one-time cash payment from some development interest. It is possible that the open space next to such a project could be held by the Federal government, but managed by the City of Phoenix.

We further urge that the studies not be delayed: Every day spent in delay weakens the City's position and reduces the options available.

PROPOSED DISPOSITION FOR INDIAN SCHOOL PROPERTY

July 27, 1987

In keeping with the doctrine of "cy pres," wherein the citizens of Phoenix acquired the land and donated it for the purposes of education of future Indian generations, let me propose the following:

1. Establish a federally chartered "non-profit corporation to do the following:
   a. Administer the revenue portion of the Indian School parcel;
   b. Enter into a management agreement with the City of Phoenix for the park area of the parcel.
2. Keep the proprietary interest in the property within the federal government and allow the City of Phoenix to lease the property on an extended long-term basis for some nominal sum upon the following terms and conditions:
   a. Approximately 20/25 percent of the property be commercially developed, probably in the form of high rise, commercial and hotel, with the profitable proceeds from these commercial developments to be placed in an Indian educational trust fund;
   b. The commercial development could be through some long-term leases or subleases wherein ownership or fee to the property would never leave the government hands but would be attractive enough wherein developers could effectively recapture their investment;
   c. Perhaps, if its passage comes about, use the industrial development area legislation [free enterprise zones] presently before the Congress to include the Phoenix Indian School. The development of one of these industrial development areas within the urban area truly best serves the concept found within the legislation and would provide the best economic viability for the Indian communities.
3. Require the stipulation from the City of Phoenix that the remaining 75/80 percent of the property be developed for a park and open space use for the citizens of Phoenix. The location of the ground within the center of the city, the immediate access to water as bounded

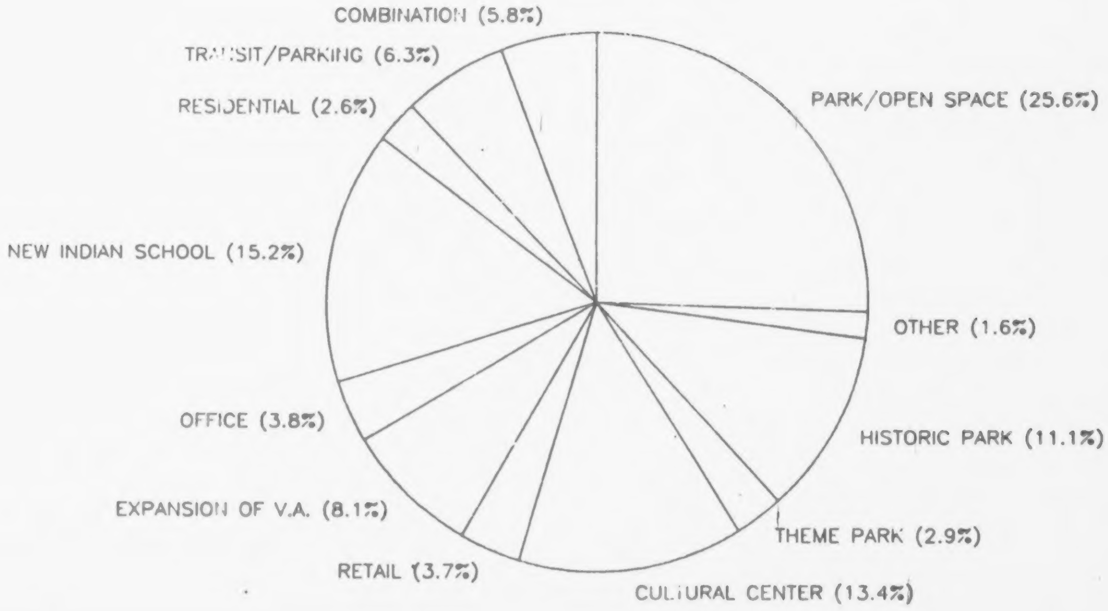
by the Arizona Canal on the north and the development of a park being limited only by one's imagination could truly allow this city to develop a "central park of the southwest" which could become the heart and lungs of the City of Phoenix and serve generation upon generation into the future.

4. The parking issue which is essential to the interest of the Veteran's Administration Hospital could be dealt with through some kind of underground tiered parking on the southeast quadrant of the property and allow and fulfill their needs for the foreseeable future. The parking could serve as an adjunct to the park and be a revenue producer.

7/87
/800 responses

INDIAN SCHOOL COMMITTEE

MOST DESIRED USES



5

United States General Accounting Office

GAO

Report to the Chairman, Committee on Interior and Insular Affairs, House of Representatives

May 1988

LAND EXCHANGE

New Appraisals of Interior's Collier Proposal Would Not Resolve Issues

GAO/GGD-88-85

GAO
**United States
General Accounting Office
Washington, D.C. 20548**

General Government Division

B-230985

May 11, 1988

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

In response to your request, we reviewed the Department of the Interior's real estate appraisals relating to the proposed exchange of the Phoenix Indian School land for land in southern Florida.

This report provides information and analysis to help the Committee determine whether Interior's appraisals are reasonable and reliable enough to provide a basis to proceed with the exchange or whether other appraisals would be advisable for each property.

We are sending copies of this report to the Secretary of the Interior, the Director of the Office of Management and Budget, and other interested parties.

Sincerely yours,

L. Nye Stevens

L. Nye Stevens
Associate Director

Executive Summary

Purpose

The Department of the Interior has proposed exchanging part of the land now used for the Phoenix Indian School, valued by Interior at about $85 million, for about 118,000 acres of privately owned land in four tracts near the Big Cypress National Preserve in Florida, valued by Interior at about $49 million, and a cash payment of about $35 million. The proposal is the largest interstate land exchange ever attempted by the Department, according to Interior officials.

The Chairman, House Committee on Interior and Insular Affairs, requested that GAO review Interior's real estate appraisals of the Phoenix Indian School and the Florida land and determine whether they are reasonable and reliable enough to provide a basis to proceed with the exchange or whether other appraisals would be advisable. (See pp. 8 to 11.)

Background

GAO retained the services of an expert consultant to assist in reviewing the already prepared appraisals of the land in Florida and Arizona to determine if they complied with professional standards, government guidelines, and other criteria that should be followed by appraisers and govern their judgment and opinions. Recognizing that the determination of real estate values is not an exact science, GAO used its consultant's analysis and other information to determine if the real estate worth of the properties as currently proposed for exchange was comparable. As the Chairman requested, GAO did not consider the environmental or other intangible benefits of the proposed exchange. (See pp. 11 to 12.)

Results in Brief

Interior's appraisals for three of the four Florida tracts generally met professional standards and government guidelines. The appraisal for the fourth tract, performed by a contractor for the State of Florida and accepted by Interior, did not comply with professional standards and could be overvalued by about $3 million to $4 million—which is less than 5 percent of the proposed transaction.

The appraised value of the Phoenix Indian School site, however, is speculative because it is based on a conjectural assumption as to the density of development the City of Phoenix would allow. Interior's proration of the appraised value to reflect changed plans for the property and failure to provide for possible future value increases are, in GAO's opinion, additional objections to the transaction.

Primarily because of the indeterminable value of the school property, GAO believes that Interior's value does not provide a basis to proceed with the exchange as it is currently proposed. Furthermore, without a decision by the city on future zoning of the site, additional appraisals would not resolve the matter.

Principal Findings

Florida Properties

Appraisals for three of the Florida tracts were made by Interior's own appraisers or contract appraisers for Interior. They generally met professional standards and complied with Interior's guidance on real estate appraisals. Although they did not fully explain some key calculations, they contained sufficient information for GAO to conclude that they had arrived at acceptable values. (See pp. 13 to 14.)

The appraisal for the fourth Florida tract, made by a contractor for the State of Florida, had significant shortcomings, such as not supporting its conclusions. GAO believes that Interior's appraised value for this tract could be overvalued by $3 million to $4 million. However, GAO believes that this is an amount that does not merit reappraisal due to the overall magnitude of this transaction. (See pp. 14 to 15.)

Phoenix Indian School

Interior's two appraisals for this property generally met professional standards, with the primary exception of conclusively estimating the density of development and thus the value of the property. The two Interior appraisals used widely divergent assumptions with respect to the amount of space that could be built on the site. The appraised values also differed greatly. GAO believes that no appraiser could definitively resolve these differences without a decision by the City of Phoenix on what it would allow to be built on the site. (See pp. 16 to 18.)

Primarily because of this, GAO concluded that the fair market values arrived at in the appraisals do not provide a basis to proceed with the exchange as it is proposed. (See p. 21.)

GAO also found that Interior's proration of the approved appraisal on an average value per acre basis to reflect a decision to sell 20 acres of the land to the city for a park and give 11.5 acres to an adjacent Veterans

Administration hospital for expansion is contrary to the basis on which appraisals are made.

Interior's tentative contract with the owners of the Florida properties allows them 3 years to accept the exchange after the contract is finalized, without providing for recognition of any escalation in value. GAO believes that an agreement that defers the possible exchange of land for several years should reflect that the future worth could be substantially more than the present worth of the property. (See pp. 18 to 21.)

Recommendations

GAO is making no recommendations on reappraising the school site because the fair market value of the school site cannot be resolved by the appraisal process until the density of development is determined. GAO's work did not consider whether or not the proposed exchange could be justified on other grounds, such as environmental benefits. (See p. 21.)

Agency Comments

GAO did not obtain official comments on this report from the Department of the Interior or other interested parties. However, GAO discussed the matters contained in this report with the Assistant Secretary for Fish and Wildlife and Parks who agreed with GAO's overall facts. He did not, however, agree with GAO's conclusions in two respects. First, he did not believe that Interior should insist on sharing the possible future escalation in value in the Phoenix Indian School property if the Florida property owners choose to defer completion of the contract. Second, he believed that in spite of the uncertainty of the allowable density in the Phoenix property, Interior's prorated value was reasonable and rational and did provide a basis to proceed with the exchange. GAO does not believe that either of these positions adequately recognizes the government's interests in the Phoenix property's value.

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Chapter 1

Introduction

In early November 1987, followed by a letter dated December 21, 1987, (see appendix) the Chairman of the House Committee on Interior and Insular Affairs requested us to review the Department of the Interior's appraisals of the Phoenix Indian School property in Arizona and of four privately owned Florida properties that the Department proposed to exchange for the school property.

Although the Chairman acknowledged that the determination of real estate values is not an exact science, he specifically asked us to determine if the appraisals (1) comply with professional standards and Department guidelines; (2) contain procedural irregularities, problems, or errors; and (3) support their conclusions. The Committee sought our opinion on whether the values expressed in the appraisals are reliable enough to provide a basis to proceed with the exchange as it is currently proposed.

We briefed the Chairman, as well as the Arizona congressional delegation, on our work on February 23, 1988. This report covers not only the findings discussed in that briefing but also additional details and analysis on the matters we reviewed.

Exchange as Currently Proposed

The Department of the Interior has requested legislative authorization to exchange part of the land (about 73 acres) now used for the Bureau of Indian Affairs' Phoenix Indian School for about 118,000 acres of environmentally significant land in four tracts near the Florida Everglades and the Big Cypress National Preserve. According to Interior officials, this is the largest interstate and highest dollar value exchange of land the Department has ever attempted. The Florida properties are owned by entities controlled by the Collier family, and the exchange is thus commonly referred to as the Collier Exchange.

Interior has proposed to close the Phoenix School because of declining enrollments in recent years due to construction of new schools on reservations in Arizona and the availability of better maintained school facilities in California. The property is valuable as commercial real estate because land adjoining or near the school has been developed with high-density office buildings, hotels, retail businesses, and multifamily residences. Appraisers have said that the school property is potentially the most valuable parcel of urban development land left in Phoenix, the State of Arizona, and possibly the western half of the United States.

According to the Assistant Secretary of the Interior for Fish and Wildlife and Parks, the exchange allows the acquisition of two additions to the Big Cypress National Preserve and two proposed national wildlife refuges without incurring current budget expenditures or adding to the federal debt. Furthermore, the exchange would result in a cash payment of about $35 million by the Colliers, which the government intends to use for the benefit of the Indian tribes historically served by the school. Interior considers the Florida lands to be valuable as they provide protection of the endangered Florida panther, Florida manatee, and the American bald eagle and contribute to the preservation of the natural water flow of the Big Cypress watershed. Figure 1.1 shows the location of the four Florida tracts.

As currently proposed, the Colliers would receive 72.9 acres of the Indian School property, valued by Interior at about $85.3 million, for about 118,000 acres of their land which has been valued by Interior at about $49.4 million. The Colliers would also pay Interior $34.8 million in cash to roughly equalize the values. Table 1.1 shows the appraised values of the lands involved in the exchange, as well as the values for each parcel agreed upon in negotiations between the Collier family interests and Interior, as of March 24, 1988.

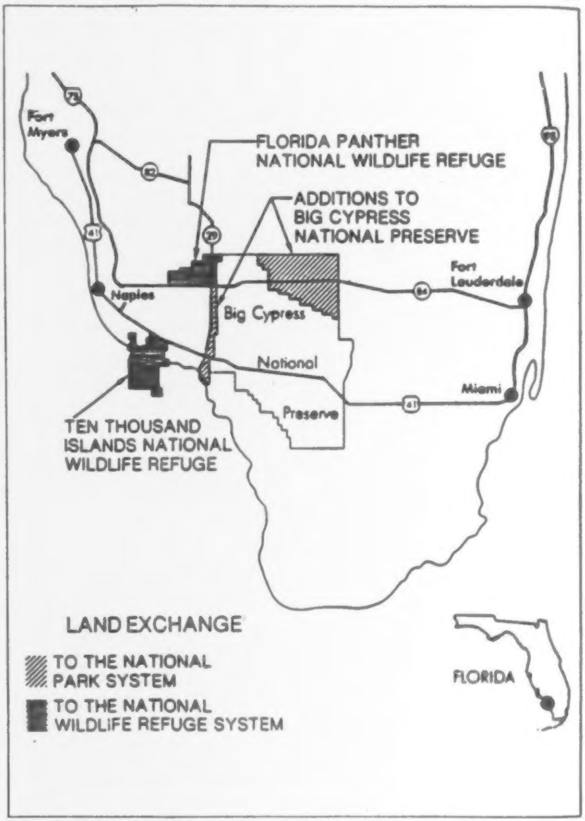
Table 1.1: Appraised and Negotiated Values for the Exchange as Currently Proposed

Dollars in millions

	Appraised		Negotiated	
	Acres	**Value**	**Acres**	**Value**
Phoenix Indian School Site	104	$122.2	72.9	$85.3
Florida Property				
Big Cypress Addition	70,010	27.9	70,010	26.6
Big Cypress Strip	13,059	8.1	13,059	10.6
Florida Panther	30,586	10.7	15,573	6.4
10,000 Islands	15,384	4.5	19,620	5.8
Subtotal			**118,262**	**49.4**
Plus Cash Payment				34.8
Total				**$84.2**

Source: Department of the Interior

Figure 1.1: Location of Florida Tracts


75
Fort Myers
82
FLORIDA PANTHER NATIONAL WILDLIFE REFUGE
95
ADDITIONS TO BIG CYPRESS NATIONAL PRESERVE
41
29
Fort Lauderdale
84
Naples
Big Cypress
National
Miami
41
Preserve
TEN THOUSAND ISLANDS NATIONAL WILDLIFE REFUGE
LAND EXCHANGE
TO THE NATIONAL PARK SYSTEM
TO THE NATIONAL WILDLIFE REFUGE SYSTEM
FLORIDA

Source: Department of the Interior.

Note: Not to scale

The Phoenix Indian School comprises approximately 104.4 acres. When Interior appraised the property, it assumed that the full parcel would be exchanged. However, Interior now plans to sell 20 acres of the property to the City of Phoenix for a park and to give 11.5 acres to an adjacent Veterans Administration hospital for expansion purposes. To reflect this reduction in the amount of land to be exchanged, Interior has prorated the total appraised value of $122.2 million on an average value per acre, which is about $1.17 million per acre. This computes to $85.3 million for the remaining 72.9 acres.

In determining the value of the Florida land, Interior appraised three of the tracts using either Interior employees or contract appraisers. These were the Big Cypress Strip, the Florida Panther, and the 10,000 Islands tracts. Interior did not appraise the fourth and largest tract—the Big Cypress Addition. Instead, Interior relied on the appraisals performed for the State of Florida and the Federal Highway Administration in conjunction with determining taking value and severance damages (see "damage value" in glossary) resulting from the construction of Interstate Highway 75. The current State Road 84, which bisects this tract, is being upgraded to an Interstate highway.

Interior informed us that while the entire Florida Panther tract was appraised, they were already negotiating the purchase of about half of this tract from the Colliers and that only one half of the tract will be included in the exchange. To reflect the purchase of one half of the tract, Interior said that they used one half of the appraised value as the figure to negotiate from.

Objective, Scope, and Methodology

As confirmed in a January 7, 1988, letter to the Chairman, the objective of our review was to assist the Committee in determining whether the real estate market values expressed in Interior's appraisals are reasonable and reliable enough to provide a basis to proceed with the exchange as currently proposed, or whether other appraisals would be advisable for each property.

Our work mainly involved interviewing Interior employees and contractors, City of Phoenix officials, and others associated with the appraisals; reviewing Interior guidelines on obtaining real estate appraisals; reviewing Interior's files on the selection of the contract appraisers that were used; reviewing the tentative contract between Interior and the Colliers; and reviewing the appraisal reports. As requested by the Committee, we reviewed existing information and did not perform new appraisals, nor did we consider intangible benefits of the exchange, such as environmental values of the properties. We inspected the Florida tracts and major comparable Florida properties by helicopter and toured the Phoenix Indian School.

We retained the services of a consultant, Mr. John D. Dorchester, Jr., President of the Real Estate Research Corporation, to assist us in reviewing the appraisals. His firm was recommended by the General Services Administration and the American Institute of Real Estate Appraisers. Mr. Dorchester is a Member of the Appraisal Institute and a Counselor of Real Estate. He has over 30 years of real estate analysis experience for private, corporate, and government clients, and was the 1982 National President of the American Institute of Real Estate Appraisers.

Our consultant assisted and advised us in (1) evaluating the assumptions, approaches, and limiting conditions of each appraisal; (2) determining if each appraisal complied with generally recognized professional standards and the Uniform Appraisal Standards for Federal Land Acquisition published by the Interagency Land Acquisition Conference in 1973; (3) judging the soundness of the "highest and best use" and appraised value for each appraisal; (4) determining whether other appraisals would be advisable for each property; and (5) determining if the "comparables" — recent sales of property in the same vicinity—used in the Florida appraisals were in fact comparable in size, amount of area covered by water, and other relevant characteristics.

At the request of the Committee, we did not obtain official comments from the Department of the Interior or other interested parties. We did obtain informal comments on our facts and analysis from the Assistant Secretary of the Interior for Fish and Wildlife and Parks, however, and incorporated them in this report as appropriate.

We did our work from November 1987 to March 1988 in accordance with generally accepted government auditing standards.

Florida Properties

Interior's appraisals for three of the four Florida tracts generally met professional standards and complied with Departmental guidelines. However, the approved appraisal for the fourth tract, which was performed by a contract appraiser for the State of Florida, did not comply with professional standards. As a result, we believe that Interior's value for this tract could be overvalued by $3 million to $4 million—which is less than 5 percent of the proposed transaction.

Interior's Appraisals

Appraisals for three of the Florida tracts—the Big Cypress Strip, Florida Panther, and 10,000 Islands—were performed by Interior's own appraisers or contract appraisers for Interior. The National Park Service handled the appraisal of the Big Cypress Strip, whereas the Fish and Wildlife Service handled the appraisals of the other two tracts. The approved appraisals for these three tracts generally met professional standards and were obtained in compliance with Interior's guidance on real estate appraisals.

According to a Fish and Wildlife Service official in Atlanta we interviewed, it is difficult to determine the value of low-lying south Florida land because of a dearth of market information for this type of land. There is little market demand for it and large sales have been limited, for the most part, to government purchases. Nevertheless, we believe that Interior's appraisals had sufficient information to support their conclusions.

All three appraisals agreed that the "highest and best use" of the properties would be for recreational use and speculative holding. This is because the land is predominantly what a layman would call a "swamp" and has practical as well as regulatory restrictions on commercial or residential development.

One common weakness in these three appraisal reports is in their quantification of how the amount of wetlands (land containing much moisture) and uplands (land slightly elevated and containing less moisture than wetlands) on the properties affected their value. Our consultant performed a regression analysis (see glossary) on the comparable sales that were used in these appraisals and determined that there was a high correlation (almost 90 percent) between the wetlands/uplands ratio and their value. The three appraisals discussed the wetlands/uplands ratios on the properties and the related comparables, but did not quantify the analysis and disposition of these ratios, nor show how they were taken into account to determine value. Nevertheless, we do not believe that the failure to explain how this was done resulted in over or undervaluation of the properties. That is, even though the appraisal reports were deficient in explaining the disposition of relative amounts of wetlands/uplands, they contained sufficient information for us to conclude that they arrived at acceptable values.

State of Florida's Appraisal

The approved appraisal for the Big Cypress Addition, performed by a contractor for the State of Florida, had significant shortcomings. The state had three contract appraisals for this tract to determine the taking value and severance damages (see "damage value" in glossary) for the planned construction of Interstate 75 on this property. Interior planned to use the remainder value as the basis for negotiating with the Colliers for this tract.

The state approved the highest appraisal for this tract. Our consultant's review of this appraisal pointed out that it had several technical weaknesses and at least two major defects from a professional perspective. We believe the major defects were that the state-approved appraisal did not support its conclusions and its premise that there is a premium value to this tract because of highway frontage.

As shown in table 2.1, the major difference between the three appraisals was in the values determined for the "before" and "damage" (resulting from Interstate 75) values. The approved appraisal had significantly higher amounts for these values than the first two appraisals. However, the "remainder" values for all three appraisals were much closer than the before and damage values. The first two appraisals were completed in November 1986, whereas the third appraisal was completed in March 1987. The state asked the first two appraisers to update their appraisals after the third appraisal was received and consider additional comparable sales that were used by the third appraiser, which was done.

Table 2.1: Big Cypress Addition Appraisals

Dollars in millions

	First Appraisal[a]	Second Appraisal[a]	Third Appraisal[b]
Before Value	$32.0	$38.3	$56.5
Damage Value	9.4	14.4	28.8
Remainder Value	$22.6	$23.9	$27.7

[a] As updated

[b] Appraisal approved by the State of Florida

The remainder value is the figure relevant to valuing the proposed exchange, since the damage calculation is a separate transaction between the Colliers and the Federal Highway Administration and the State of Florida, not involving Interior. We believe that the third appraiser's remainder value could be overvalued by approximately $3 million to $4 million in view of the conclusions and values of the revised first two appraisals and Interior's appraisals of the other Florida tracts.

Mineral Interests and Verifying Acreage

When we briefed the Chairman, the Arizona congressional delegation, and the Assistant Secretary of the Interior for Fish and Wildlife and Parks on February 23, 1988, we reported that Interior had not fully resolved two issues relating to the four Florida tracts: (1) defining the effect on value and government use that the private exploration and development of mineral interests might have and (2) verifying the amount of acreage on the tracts. At that time, the tentative contract between the Colliers and Interior allowed the Colliers to retain the subsurface mineral interests in the Florida land, but did not specify the extent of testing and development that would be allowed, access to the property, and the type and amount of construction that would be allowed. Also, there was a dispute between Interior and the Colliers on the amount of acreage contained in the 10,000 Islands tract.

In discussing these matters with the Assistant Secretary for Fish and Wildlife and Parks on March 24, 1988, we were provided a copy of the revised tentative contract with the Colliers. Included in the contract are detailed stipulations on oil and gas exploration and development, which address our earlier concerns. The Assistant Secretary also informed us that the disputed acreage in the 10,000 Islands tract has been resolved by the Collier's agreement to provide a quitclaim deed[1] for the land that was submerged and in dispute. As a result of these actions, we feel these issues have been adequately resolved.

Conclusions

Although the State of Florida's appraisal of remainder value for the Big Cypress Addition appears to be somewhat overvalued, we believe there is relatively little potential benefit to the government from reappraising the Florida property. We note that the negotiated value of this parcel is $1.3 million less than the approved appraisal's valuation, and that the $3 million to $4 million possible discrepancy is less than 5 percent of the proposed transaction.

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[1] A quitclaim deed is a legal instrument used to release one person's right, title, or interest to another.

Chapter 3

Phoenix Indian School Property

The most significant problem with the Collier Exchange is the conjectural nature of a determination of the value of the Phoenix Indian School. The driving force behind the value of the school property is the density of development that the City of Phoenix will allow on the site. This is now an unknown that cannot be resolved by any appraiser. Further, Interior's proration of the value of the land on an average value per acre and the lack of a provision for a possible future increase in the property's value do not adequately recognize the government's interests in the Phoenix property's value. Primarily because of the unknown value of the school property, we believe Interior's appraised fair market values do not provide a basis to proceed with the exchange as it is currently proposed, nor do we believe that additional appraisals would resolve the matter until rezoning has taken place.

Two Interior Appraisals

Interior had two contractors, Nolan and Lee, appraise this property. The Albuquerque, New Mexico, office of the Fish and Wildlife Service handled the contracting for both appraisals. Officials in that office informed us that the initial oral directions from Interior officials in Washington were to get one appraisal, to allow 2 days to prepare a government estimate, and to allow the appraisers a few weeks rather than the normal time frame of several months. They said, however, that ultimately normal procedures were followed in obtaining the appraisals.

Although neither of the reports identified the rights being acquired by the purchaser, they met professional standards in all other respects. However, their conclusions on the amount of space that could be built on the site, and consequently the values they estimated, differed greatly.

The Nolan appraisal, completed in February 1987, concluded that the value of the school site was $160 million using the income approach (see glossary). The report also stated that the value would be $220 million using the comparative, or market, approach (see glossary). Nolan's report stated that the $220 million was then discounted to reflect the absorption rate (see glossary) he assumed, which equaled the $160 million value determined by the income approach. However, the Nolan report did not show the actual mathematical computations or explain the reconciliation of the two values. The Lee appraisal, which was based on the comparative approach, concluded that the value would be $122 million. The difference of opinion between the two appraisers using the one approach they have in common—the comparative approach—amounts to $98 million.

Interior approved the March 1987 Lee report as the appraisal value for the Phoenix Indian School property.

The two reports had widely divergent conclusions with respect to the floor-to-area ratios (see glossary), the amount of space that could be built on the site, the absorption period (see glossary), and the final appraised value, as shown in table 3.1.

Table 3.1: Contrast of Two Phoenix Indian School Site Appraisals

	Nolan Report	Lee Report
Open Space Portion	0.5	0.33
Floor-to-Area Ratio	2.55	1.15
Cost per Buildable Square Foot	$20.00	$22.84
Space to be Built (in square feet)	11.0 million	5.4 million
Absorption Period	8 years	15 years
Appraised Value	$160 million	$122 million

Both reports were inconclusive as to the amount of space that could be built on the site. This is the primary determinant of value of the Phoenix property. However, no appraiser could resolve this question. Fish and Wildlife Service officials in Albuquerque said that appraising the Indian School site was as difficult as determining the value of the Mall in Washington, D.C.

The planning director for the city and a representative of the Mayor told us that there are no specific criteria to determine allowable density for the site. They said that the City Council would have to approve a development plan of any purchaser of the property and decide on what type of development and the amount of density that would be allowed. According to the appraisers and City of Phoenix officials we interviewed, the process of obtaining city approval normally takes from 4 to 9 months. One anticipated complication they mentioned was that residents in the surrounding neighborhood, Encanto Village, would strongly oppose either a 5 million or 11 million square foot development at the site.

The consultant engaged to provide a legal and political opinion on rezoning the site for the Lee appraisal said that predicting the likely outcome of a political decision by the City of Phoenix was highly speculative to the point of being "purely artificial in nature." He concluded that extensive planning and unparalleled developer credibility could produce a plan with significantly greater density than the plan used in the Lee appraisal to estimate the value of the property. Until the city decides on the density of development it will allow on the site, we believe it is not realistic to estimate the value of this property and, hence, whether the exchange as proposed is economically advantageous to the government.

On February 23, 1988, when we briefed the Chairman and the Arizona congressional delegation on our work, the delegation decided it would ask the City of Phoenix to decide on the allowable density of the Indian School site and to have the land reappraised on the basis of the city's decision. In a February 29, 1988, letter, the Mayor of Phoenix advised the Chairman that it was not possible to provide the Arizona delegation a statement of the city's position on future zoning of the school property because the zoning changes must proceed according to locally established processes designed to ensure that community needs and private interests are balanced.

Proration of Approved Appraisal

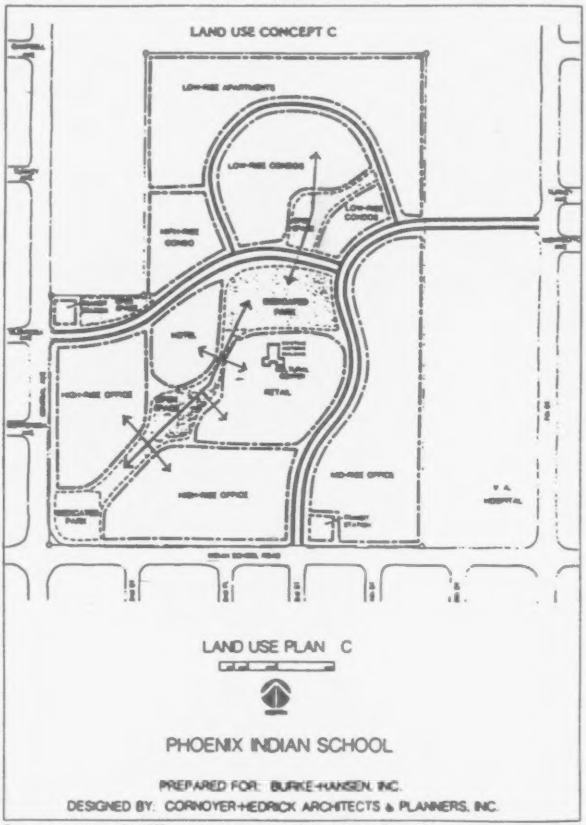
When the school site was appraised, Interior assumed that the full site, approximately 104 acres, would be exchanged for the Florida properties. Since then, Interior has revised its plans and now intends to sell 20 acres to the city for a park and give 11.5 acres to an adjacent Veterans Administration hospital for expansion. To reflect this change, Interior said that it prorated the approved $122 million value on an average value of about $1.17 million per acre.

The appraiser who performed this appraisal told us that he had assumed that about 8 acres, located in the more valuable portion of the land (see fig. 3.1 for his development plan), would have to be dedicated to the city for a park, and that whatever private sector entity acquired the property would have to negotiate with the Veterans Administration, which wants to acquire a portion of the site.

When we asked Lee if he agreed with Interior's proration, he informed us by letter that:

> "Essentially, the modification of these two major assumptions totally invalidates the appraisal report prepared under my signature and dated March 24, 1987. I can state unequivocally that any manipulation of or allocation of the value estimate contained in our original report on a price per square foot or, more ridiculously, on a price per acre basis would be ludicrous. You are violating the appraisal principle of contribution."

Figure 3.1: Lee's Development Plan for the Phoenix Indian School Site


LAND USE CONCEPT C
LOW-RISE APARTMENTS
LOW-RISE CONDOS
LOW-RISE CONDOS
HIGH-RISE CONDO
DEDICATED PARK
HOTEL
RETAIL
HIGH-RISE OFFICE
HIGH-RISE OFFICE
MID-RISE OFFICE
V.A. HOSPITAL
DEDICATED PARK
TRANSIT STATION
INDIAN SCHOOL ROAD
LAND USE PLAN C
PHOENIX INDIAN SCHOOL
PREPARED FOR: BURKE-HANSEN, INC.
DESIGNED BY: CORNOYER-HEDRICK ARCHITECTS & PLANNERS, INC.

Source: Lee's March 24, 1987, appraisal report of the Phoenix Indian School site

In fact, he said that the net effect of reclaiming the 8 acres of land in the more valuable area of the tract could result in a significant increase in value of the remaining portion, rather than a presumed reduction in the value of the property. Our consultant agreed that proration is contrary to the basis on which appraisals are made and that Interior's action is an inappropriate use of the Lee appraisal.

City of Phoenix officials told us that they would expect a developer of such a large site to deed at least 20 acres to the city for a park at no cost as a form of concession to authorize development. Therefore, we question the reasoning of reducing the exchange value of the property by $1.17 million per acre for the 20 acres, since the government is relieving at least some of the obligation a developer would normally assume in Phoenix.

Possible Escalation in Value

The tentative contract between the Colliers and Interior allows the Colliers 3 years to accept the exchange after it is signed, without providing for any recognition of escalation in value. In the meantime, the government bears carrying costs of the land whereas the Colliers would be liable for property taxes if the transaction were concluded sooner. Interior's appraisal reports indicated that while the Florida properties have stabilized in value and have not significantly changed in price over the past 5 or more years, Phoenix land values have escalated rapidly in recent years, notably in the area of the Phoenix Indian School. The appraiser for the approved report on the Phoenix Indian School site told us that while land in Phoenix has not increased in the past year, he believed that the school land would appreciate about 12 percent annually over the next 3 years.

The Assistant Secretary, in commenting on our findings, told us that the tentative contract with the Colliers did not provide for increased value in the school property because: (1) the value of the school land is contingent on the Colliers' ability to rezone the land; (2) Interior believes that the land in Florida will also appreciate; (3) if the Colliers decide not to accept the exchange, Interior can buy the Florida land at the negotiated amounts; and (4) Interior has to accommodate the City's desire to allow the Colliers time to rezone the land.

A prominent commercial real estate attorney in Phoenix told us that he was not aware of any seller in Phoenix who would tie up property more than 12 months without some assurance of benefitting from an increase in its value. We believe that a prudent seller engaged in a transaction that defers the possible exchange of land for several years would require that the exchange agreement explicitly address the issue that the future worth could be substantially more than the present worth of the property.

Views of the Assistant Secretary for Fish and Wildlife and Parks

In commenting on our analysis of these matters, the Assistant Secretary for Fish and Wildlife and Parks told us on March 24, 1988, that while he agreed that the fair market value of the Phoenix Indian School site was unknown, he nevertheless felt that Interior's valuation was a reasonable one. He said that he agreed with our facts and conclusions as presented in the February 23, 1988, briefing with two exceptions. First, he did not believe that Interior should take into consideration possible escalation in value in the Phoenix Indian School property for the reasons discussed above. Second, he believed that in spite of the uncertainty of the allowable density in the Phoenix property, Interior's value for that property was reasonable and rational and did provide a basis to proceed with the exchange. We agreed that our analysis does not preclude the possibility that Interior's valuation of the school property could be accurate.

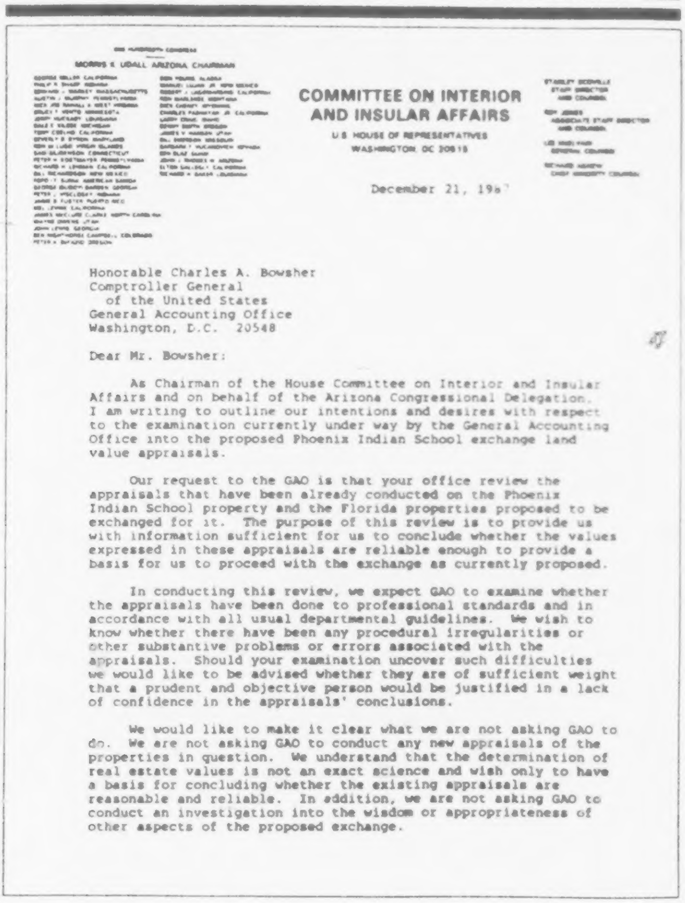
Conclusions

The fair market value of the Phoenix Indian School property is unknown and cannot be resolved by the appraisal process in the absence of a density decision by the city. Interior's proration of the appraised value is questionable because it is contrary to the basis on which appraisals are made and relieves at least some of the obligation a developer would normally assume in Phoenix. Further, we believe some consideration for the possible escalation of value should be included in the contract to exchange if its acceptance is to be deferred to a future date.

Primarily because of the unknown value of the school property, we believe that the Interior Department's real estate values do not provide a basis to proceed with the exchange as it is presently proposed. While appraisals are normally a useful tool in decisionmaking, we believe that they cannot provide a basis for deciding whether or not to approve the proposed Collier exchange. Since our review was limited to this question, we cannot determine whether other factors, such as the environmental benefits that the government would obtain, might provide an alternative basis for justifying the exchange.

Appendix

Letter From the Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives



MORRIS K. UDALL ARIZONA CHAIRMAN

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 21, 1987

Honorable Charles A. Bowsher
Comptroller General
of the United States
General Accounting Office
Washington, D.C. 20548

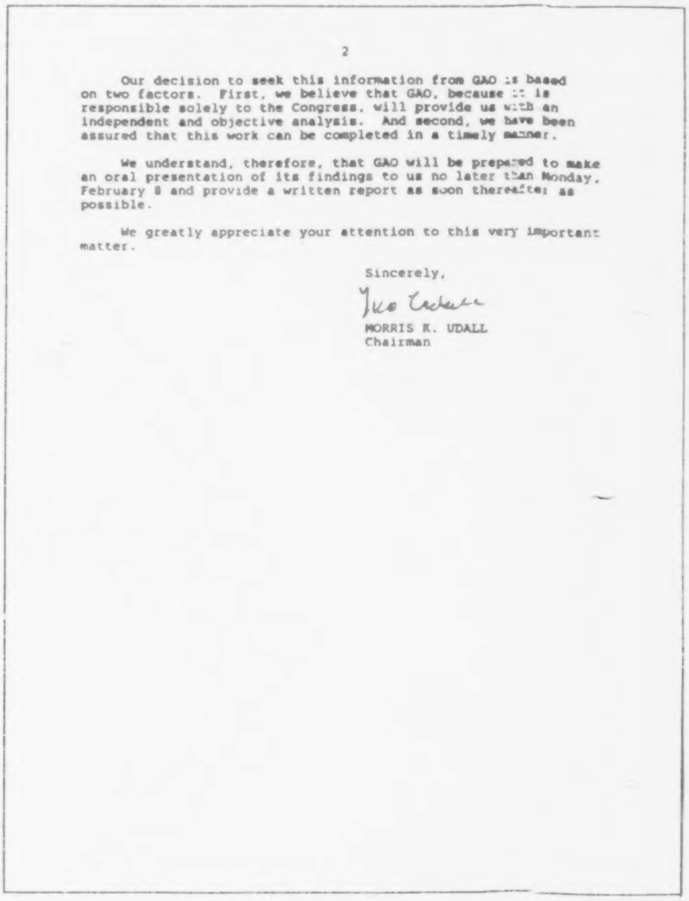
Dear Mr. Bowsher:

As Chairman of the House Committee on Interior and Insular Affairs and on behalf of the Arizona Congressional Delegation, I am writing to outline our intentions and desires with respect to the examination currently under way by the General Accounting Office into the proposed Phoenix Indian School exchange land value appraisals.

Our request to the GAO is that your office review the appraisals that have been already conducted on the Phoenix Indian School property and the Florida properties proposed to be exchanged for it. The purpose of this review is to provide us with information sufficient for us to conclude whether the values expressed in these appraisals are reliable enough to provide a basis for us to proceed with the exchange as currently proposed.

In conducting this review, we expect GAO to examine whether the appraisals have been done to professional standards and in accordance with all usual departmental guidelines. We wish to know whether there have been any procedural irregularities or other substantive problems or errors associated with the appraisals. Should your examination uncover such difficulties we would like to be advised whether they are of sufficient weight that a prudent and objective person would be justified in a lack of confidence in the appraisals' conclusions.

We would like to make it clear what we are not asking GAO to do. We are not asking GAO to conduct any new appraisals of the properties in question. We understand that the determination of real estate values is not an exact science and wish only to have a basis for concluding whether the existing appraisals are reasonable and reliable. In addition, we are not asking GAO to conduct an investigation into the wisdom or appropriateness of other aspects of the proposed exchange.



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Our decision to seek this information from GAO is based on two factors. First, we believe that GAO, because it is responsible solely to the Congress, will provide us with an independent and objective analysis. And second, we have been assured that this work can be completed in a timely manner.

We understand, therefore, that GAO will be prepared to make an oral presentation of its findings to us no later than Monday, February 8 and provide a written report as soon thereafter as possible.

We greatly appreciate your attention to this very important matter.

Sincerely,

MORRIS K. UDALL
Chairman

Glossary

Absorption Period	The time it would take the general market demand for space to absorb, or take up, the increased supply of space from new construction.
Before Value	The market value of an entire tract of property before a part of it is taken, or severed.
Comparables	Recent arm's length sales of property in the vicinity of the property being appraised.
Comparative Approach	A method to value property whereby recent sales of property in the vicinity are compared to the property being appraised on the basis of location, improvements, topography, transportation, utilities, and all matters which have an effect on market value pertaining to relative desirability. Also called market approach. Normally, this is the most direct and accurate method of estimating value.
Cost Approach	A method to value property whereby the fair market value of bare land is added to the depreciated reproduction or replacement cost of the improvements to arrive at an indication of the value of the property.
Damage Value	The amount of compensation an owner is entitled to for the loss in value to property when only a part of a tract is taken (taking value), which diminishes the value of the remainder of the property. Also called severance damage.
Fair Market Value	The amount in cash, or on terms reasonably equivalent to cash, for which in all probability property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy.
Floor-To-Area Ratio	The amount of buildable square footage in relation to the amount of land square footage on a property.
Highest and Best Use	The most profitable likely use to which a property can be put.

Income Approach	A method to value property whereby the expected net earnings, or net income, of an income-producing property are estimated over its useful life and capitalized by using a rate reflecting the ratio of net income to sales prices in similar transactions.
Regression Analysis	A statistical procedure used to relate how the changes in one variable affect one or more other variables.
Remainder Value	The market value of the remaining property after a portion of an entire tract is taken, or severed. Also called after value.

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questions about the value of the Indian school and the appraisals used to value the Florida lands.

Flaws in H.R. 4519

There are a number of specific problems with H.R. 4519 and the proposed exchange agreement. For example:

-- The agreement gives Collier a three-year option to purchase the property at 1987 prices. According to GAO, land values in Phoenix could increase at 12 percent per year. This could result in a $40 million loss the Federal government.

-- The bill allows third parties to offer a counter-proposal. However, this "outside bidding" process is seriously flawed and effectively bars any other bids.

-- Surveys and appraisals were not made of all the specific lands being exchanged in Florida.

-- Marketable title is not required for all the Florida lands. This is significant since the May 10th exchange agreement shows that as much as 60 square miles of the Florida land is below mean high tide and may be owned by the State of Florida, not by the Colliers.

-- The GAO evaluation of the Indian school property concludes that "primarily because of the unknown value of the school property, we believe Interior's appraised fair market values do not provide a basis to proceed with the exchange as it is currently proposed, nor do we believe that additional appraisals would resolve the matter until rezoning has taken place." (p. 16, emphasis added)

-- The Phoenix Indian School would be closed immediately. However, there would be no payment to the tribes for up to three years.

Committee Members should be aware that the Interior Department signed the exchange agreement last Thursday, one day after the highly critical GAO report was released.

GEORGE MILLER
7th District, California
2228 Rayburn House Office Building
Washington, DC 20515
(202) 225-2095
John Lawrence
Administrative Assistant

Chairman, Select Committee on
Children, Youth and Families

Committee on Interior and Insular Affairs
Chairman, Subcommittee on Water and Power

Committee on the Budget

Committee on Education and Labor

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May 16, 1988

Dear Interior Committee Colleague:

On Wednesday, the Full Committee will consider H.R. 4519, the "Arizona-Florida Land Exchange Act of 1988." I am writing to request your support for an amendment in the nature of a substitute I will offer to the bill.

The current legislation is flawed in a number of respects. Unless the bill is significantly changed, and the questions raised in a recent General Accounting Office (GAO) report are addressed, I don't believe the bill should be favorably reported.

Background

Last July, I chaired the committee oversight hearing concerning the Phoenix Indian School exchange. The proposal calls for exchanging the land now used for the school in downtown Phoenix for a cash payment and land owned by the Collier family enterprises in Florida.

The exchange had been criticized by some outside observers and Members of the Committee. The Department assured us at the hearing that the proposed exchange was based on an "equal value" standard. However, some Members were not satisfied that the proposed exchange met this standard.

Accordingly, the Chairman requested a GAO report on the exchange. The report, which was issued last Wednesday, points out that this is the largest interstate and highest dollar value exchange of land the Department has ever attempted. (The Phoenix Indian School is considered by knowledgeable appraisers to be the most valuable piece of urban real estate in the West.)

The report noted that since the July hearings, the exchange has changed dramatically. At that time, the total value of the proposed exchange was $98 million. Today, it is only $79 million.

The GAO report concluded that the Department valuation of the school property was seriously flawed and did not provide a basis to move forward with the exchange. It also raised

Provisions of the Substitute

The substitute I will offer retains the basic framework of H.R. 4519. It would allow the City of Phoenix, the Veterans Administration, and the State of Arizona to select up to 35 acres of the Indian school property.

The remaining Phoenix Indian School property would be sold by the Secretary through an competitive bidding process, open to anyone, including the Colliers.

Proceeds from the sale of the property would be used to assist in the education of Arizona Indians and finance purchase of park and wildlife refuge in-holdings. The first $35 million in proceeds would be made available to Arizona Indians tribes for educational purposes. The next $35 million would be used for park and refuge land acquisition. The remaining funds would be divided equally between the Indians and conservation land acquisition.

Advantages of the Substitute

The substitute contains a number of inherent advantages over H.R. 4519 as currently drafted.

First, every concern and criticism contained in the GAO report would be answered.

Second, more funds are provided for Indian education and the Navajo Tribe is provided a share of the proceeds more consistent with their student population.

Third, with the elimination of the present exchange, the time required to complete the entire transaction is reduced from three years to one year.

Fourth, the City of Phoenix is given 20 acres for an urban park as requested, and all buyers of the Indian school would be obligated to accept the city's zoning terms and conditions. The city retains all of the controls and leverage, consistent with existing local authorities.

Fifth, the Veterans Administration and State of Arizona are given the same amount of land for their new facilities under the same terms and conditions as it would under H.R. 4519 as presently drafted.

Sixth, the Colliers would be able to bid along with others once the city's zoning determinations are made. In fact, they remain in an excellent position to submit a superior bid. My amendment in no way eliminates the Colliers from being considered for this property.

Enclosed is a copy of the GAO report and a section-by-section of my substitute.

I hope you will be able to join in support of my substitute when it is offered this Wednesday.

Sincerely,

George

GEORGE MILLER
Member of Congress

SECTION-BY-SECTION OF
MILLER SUBSTITUTE TO H.R. 4519
"Phoenix Indian School Disposition Act of 1988"

TITLE I

SEC. 101. DISPOSAL OF SCHOOL PROPERTY.

Authorizes Secretary to dispose of the Phoenix Indian School under terms of this Act, not laws governing the disposal of Federal property.

SEC. 102. SALE OF PROPERTY AND DISPOSAL OF PROCEEDS.

Secretary shall offer the property for sale to the public for one year, or until six months after the City has substantially completed the planning and zoning process, whichever is longer. Secretary shall sell the property in a commercially prudent manner designed to generate the maximum economic return from the sale.

Proceeds from the sale of the school would be made available without appropriation and allocated as follows:

(1) first $31.5 million to the Intertribal Council of Arizona (ITCA) for furthering education among its members.

(2) next $3.5 million to the Navajo Tribe for furthering education among its members.

(3) next $35 million to acquire privately-owned lands in parks and refuges.

(4) remaining proceeds would be: 45 percent to the ITCA, 5 percent to the Navajo Tribe and 50 percent for park and refuge acquisition.

Secretary shall obtain current, independent appraisals and surveys for all park and refuge acquisitions.

Secretary must cooperate with the City for the property's planning and zoning. Sale would take place consistent with the City's existing planning process. Local planning or zoning authorities are not superceded or otherwise altered.

SEC. 103. CONVEYANCE OF LANDS.

Authorizes conveyance, without cost, of 20 acres to the City of Phoenix, 11.5 acres to the VA, and 4.5 acres to the State of Arizona.

SEC. 104-107. ELECTION BY THE CITY, VA AND STATE.

City and State must exercise their options within 6 months, and conveyance would take place after sale of property. City and State may exchange portions of their selections with the purchaser of the Indian school property, with a reverter to U.S. for open space.

VA may select 11.5 acres adjacent to its existing hospital for expansion purposes; transfer occurs at time of sale of property. VA must report to the Congress every 6 months on its plans.

If VA or State don't select lands, Secretary shall offer to sell those lands to the school purchaser at fair market value.

SEC. 108. REVERSION OF LAND NOT ACCEPTED.

Any land not conveyed to the purchaser, State, VA, or City, or which reverts to U.S., shall be managed by the Park Service and disposed of by subsequent act of Congress.

SEC. 109. OTHER VETERANS ADMINISTRATION LANDS.

Any land the VA doesn't require shall be offered for 30 days for sale to the City for park land, or sold to purchaser of the Indian school at fair market value.

SEC. 110-112. RIGHT-OF-WAY, ACCESS, AND EASEMENTS.

Reserves a right-of-way to the purchaser for access to the property. Requires VA to give State access to their lands. Requires right-of-way to purchaser across VA-selected lands from 7th Street.

TITLE II

SEC. 201-203. CLOSURE OF THE PHOENIX INDIAN HIGH SCHOOL.

Requires Phoenix Indian High School to be closed on June 1, 1988. Within 30 days, Secretary must notify Arizona tribes affected by the closing and student or parent of those enrolled on January 1, 1988. Within 60 days after closure of the Phoenix Indian High School, Secretary transfers control of the school to the National Park Service.

PREPARED STATEMENT OF JAMES PEIRCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, WASHINGTON, DC

On behalf of the National Federation of Federal Employees, which represents the majority of Bureau of Indian Affairs employees, including all the existing off-reservation boarding schools, I appreciate the opportunity to appear before this joint hearing today to discuss S. 2420, the Arizona-Florida Land Exchange Act and the effects it would have on the Phoenix Indian High School.

At the heart of this legislation is the BIA's intention to close PIHS and make 105 acres of prime real estate available for development. While this course of action might make sense for those who stand to gain from the development of this land, clearly it does not serve the needs of the Indian children.

Reports from BIA have been fairly accurate in their description of the problems at PIHS, particularly the extensive repairs required by the physical plant. However, the reports have failed to note that these problems were caused mainly by the years of neglect on the part of the Bureau. The employees at PIHS feel "set up" by the Bureau. After years of ignoring the need for physical renovation and rehabilitation, BIA claimed that the school was too run down to save.

The reports have also failed to discuss one of PIHS's biggest assets, the school's close proximity to the Indian communities of the Southwest. Because of the relative nearness of PIHS, the staff has developed a close rapport with parents and has been able to discuss regularly with them their children's academic performance and social development. The parents know and trust the staff at PIHS, and this relationship would be lost if the school were permitted to close.

The Bureau has promoted a policy that Indian children should be educated as close to home as possible, and then cites this policy as a reason to close PIHS. If the school closes, the children enrolled there who need a boarding school atmosphere will have to travel even further from their homes to attend school. For many, there is no option other than living away from home, since there are only five Indian reservations in Arizona with high schools located on the reservations. For others a boarding school becomes the only reasonable alternative when the children fail to succeed in the public schools near their home.

The off-reservation boarding schools (ORBS) fill a vital role for Indian students whose educational and social service needs cannot be met in other settings. The dropout rate among Arizona Indian youth is 36% according to the 1980 census. Truancy and substance abuse problems that can thwart a child's chance for success in a public school are often dealt with successfully at a boarding school. Without the special ORBS facilites, many Indian children have but a bleak future before them.

Yet the Bureau of Indian Affairs, which holds a trust responsibility for all Indians, but most importantly future generations, has seen fit to sabotage the future for these children by sabotaging PIHS and the other ORBS. Funding levels have been reduced so that ORBS have been unable to develop programs and aggressively recruit students. Student enrollment levels have been artificially reduced by making admission standards more rigorous and by making the application process more cumbersome.

It is a simple thing to say that boarding schools are an unattractive substitute for the public school down the road from a stable, traditional family. We do not disagree. The BIA teachers we represent would enjoy nothing more than seeing their students in just such an environment. Unfortunately, it is not in their power, nor anyone else's to reorder these children's lives. The teachers and the BIA as a whole can only use the means at hand to help these students adjust to the lives they've been given. In closing PIHS, the Bureau would throw away one of the few means that dedicated teachers have left to put these children on the path to a successful adulthood.

Ill-advised as it may be, it seems likely that PIHS will be closed nonetheless. However, BIA continues to have responsibilities for the education of Indian children in this part of the country, and it apparently intends to continue ignoring these responsibilities. Congress should act now and make it clear that despite the closing of PIHS the Bureau must live up to its responsibilities. We have several recommendations concerning the continuing education of the PIHS students and other Indian children in the Southwest, the disposition of PIHS property and the future employment of the PIHS staff. Many of these suggestions were included as Title II of H.R. 5012, the recently introduced substitute for the original Land Exchange legislation in the House, H.R. 4519.

We request that the enrollment boundaries for Sherman Indian School in Riverside, California be expanded to include those of PIHS so that there can be an easy transfer of those students who wish to continue their education in an ORBS setting. We request that funds be authorized for Individual Education Plans to meet the transition needs of the PIHS students so that none of these children are allowed to fall through the cracks. We request that funds be reserved for a "Child Find" to identify school age children not attending schools on and around reservation areas of New Mexico, Arizona and Southern California. PIHS employees estimate that there are 400-500 such children. These children belong in school and BIA should see that they are enrolled. Qualified staff from PIHS should be reassigned to the Phoenix Area Office to conduct the Child Find. We request that an inventory of the accountable property at PIHS be made and that any equipment be physically transfered to any other ORBS that may request items from that inventory.

We further request that the PIHS staff be offered an opportunity to convert from excepted service status to competitive service status so that they might continue their Federal careers. We request that relocation costs be provided before, during, and for 24 months after final closure of PIHS to school employees. The Bureau has had difficulty in recruiting staff to work in BIA schools due to the isolation and special challenges of working with Indian children. The PIHS staff is eager to accept these challenges and BIA should use whatever resources are available to keep these employees in the Bureau's education system. We request that the Full-Time-Equivalent ceiling at Sherman Indian School be adjusted to permit transfer of any PIHS employee wishing to do so. We request that the funding for Sherman Indian School be increased by the percentage of capacity projected by the Child Find, or by the number of students attending PIHS in the 1987-88 school year, whichever is greater. We request that the Secretary provide for staff travel to pre-process students within any community identified as having high needs for any ORBS school. Such funding should be an add-on to the Indian School Equalization Program formula for ORBS schools. We request that for each employee within two years of retirement eligibility who elects to retire, an additional credit of two years be available. Four PIHS employees are 48 years old with 18 years of service, just short of qualifying for early retirement.

While NFFE finds the proposed closure of the Phoenix Indian School to be a tragic mistake, we ask that the Senate do all in its power to protect the students and staff should the school actually close its doors.

That concludes my statement. I will be happy to answer any questions.

Testimony of Phoenix Indian School Property Preservation Coalition and North American Indian Women's Association, Arizona Chapter Inc.

Arizona -Florida Land Exchange of 1988

Honorable Inouye, Chairman of Indian Affairs Select Committee and members of Energy and Natural Resource Committee, and Veteran's Committee,

My name is Jean Chaudhuri, I am a Muskogee-Creek Indian, a member of NAIWA, Arizona Chapter, Inc., and co-ordinator of Phoenix Indian School Property Preservation Coalition. I hereby submit this testimony to the Senate Hearing.

NAIWA has opposed the land exchange for the past several years. Phoenix Indian School Property Preservation Coalition a community based organization adamantly opposes the land exchange. Indian education is too important to be ignored. If the land exchange is allowed to take place, the Indian students will suffer the consequences.

On June 17, 1988, the National Congress of American Indians in their resolution of support to prohibit the Phoenix Indian School closure stated that: "There are 9000 Arizona Indian High School age students who are not attending any school, because public schools have failed them". According to testimony submitted by the Navajo Nation on July 30, 1987, there were at that time over "3000 Navajos age 16 and under who have not been successful in reservation school, nor enrolled in suitable school or training programs". Navajo Tribal Chairman, Peter McDonald, stated to the Navajo Area School Board in March 1988 that "they should be brought to justice for educational malpractice". In considering these statistics, we ask the question, are the Indian schools run by the BIA meeting the needs of the children? Somewhere, someone is failing these children! Indian educational interests need to be protected. We strongly encourage your committees to re-evaluate your committment to Native Americans. Phoenix Indian School has had and will continue to have a positive effect on the Indian students themselves, as well as the Indian and non-Indian community as a whole. Before further action takes place, alternatives need to be explored.

Why is the Congressional delegation of Arizona in such a rush to trade the most valuable piece of property in the West, when there are Indian children out there with unmet needs?

Why would the BIA spend money to do a study on the unmet needs of boarding school students and then ignore their own recommendation. According to the Inter-Tribal Council of Arizona, Inc.'s "Tribal Perspectives on the Needs for Off-Reservation Boarding Schools" report recommended to the BIA the school remain open . "The data supports the fact that students enroll in boarding school for both social and educational reasons, and the boarding schools provide an educational resource that is not available elsewhere. Moving the Indian students home will not change their needs." Indian education is too valuable therefore the potential of Indian students must be enhanced, in order for them to pursue and succeed in higher educational surroundings.

History cannot be ignored. Since 1891, the intent of the United States Government was to educate, assimilate, and thereby mainstream Indians into the civilized society. The Phoenix Indian School students were used a s cheap laborers to work in the fields and as domestic workers. By the same token the rigid military discipline instilled the principles of work ethic and democracy, which also enhanced their traditional native values, for it was honorable to be a hard worker and it was honorable to give justice. Many young men volunteered to go to war, sacrificing their lives to uphold and protect the people in our country. On the Phoenix Indian School campus there is a war memorial dedicated in the honor of the Indian Veterans.

The raising of the flag on Iwo Jima by Ira Hayes is an historical fact that the Pima Tribe is very proud of. The Navajo Code Talkers, during WWII provided critical assistance in coded communications that could not be deciphered by the enemy. They have been honored on various occasions. It is a sad commentary that this rich history can be wiped out by the closure of the Phoenix Indian School. History is education, because we can learn from the past. Culture is education , because we can learn from each other, and in doing so, strengthen each others values. Education is liberation, please do not deny this opportunity to the children in the present and in the future. Education will be our salvation, now and in the future, by your decisions you shape the destiny of our people. We urge you fulfill your moral obligation to Indian education.

We oppose H.R. 4519, substitute bill H.R. 5012 and Senate 2420 or any other similar legislation that would result in the loss of the Phoenix Indian School property . The General Accounting Office has not endorsed the swap as being beneficial for the United States.

We share Senator DeConcini's concerns on Indian interest. We strongly feel we have not been given ample notice, nor given the opportunity to heard in our own State, where the largest population of Indians reside. "The tribes deserve a full opportunity to be heard. There is nothing in the bill to ensure this opportunity."

Lastly, the school provided service throughout many tribes in the United States, it is only fair that they be part of the decision making process.

Senate Committee on Indian Affairs
Subcommittee on Public Lands National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Hearing on (SB) 2420
July 25, 1988

Mr. Chairman, and members of the Senate Select Committee on Indian Affairs, my name is Abbott Sekaquaptewa. I am the Chairman of the Board of Directors of Native American Heritage Preserve, Inc. (NAHP). I am also past Chairman of the Hopi Indian Nation. I have with me today Richard Young, who is a Tlingit Indian and presently serving as Executive Director of NAHP, and Betty Marie Bach, a Muskogee-Creek Indian who is Secretary-Treasurer of NAHP.

We sincerely appreciate the time you are giving us today to speak to you on what we believe is a once-in-a-lifetime opportunity to realize a dream that we all share. That dream is to bring together in one place the cultures and life-ways of a multitude of Native American tribal nations, to share among ourselves and with others, now and in the future, the good things of American Indian life that will not only enhance, but will revitalize and inject new energy into the cultural life of our nation as a whole.

We propose that, rather than parcelling out the Phoenix Indian School property among the various competing interests and bringing to an end forever this landmark monument in the history of our state and tribal nations, it be preserved in one piece and utilized as a comprehensive Native American heritage preserve. We are confident that you will see that the Native American Heritage Preserve, as an organization, has embarked on a trail toward the realization of a cultural achievement of such momentous significance that it stirs the imagination. As one of our members has said, "If our mission is not completed, the memory of our loss will echo and reecho in the cultural conscience of our generation and the generations to come."

The preservation of the heritage, history and traditions of the North American Indian cultures through written and other documentation is necessary, we believe, so that we will not repeat the losses that have occurred from the rich cultural life of the Enote and Hisatsinon of the Four Corners area, and the Hohokam and other ancients of the desert-dwelling peoples.

We believe that out of the ashes of our past a new life can arise. A window of opportunity has opened up with the closing of the Phoenix Indian School. If we do not seize this opportunity now, we may have lost forever our one chance to replicate all North American Indian history and culture in one complex--representing the ultimate opportunity for preservation. This is so because the generation with the knowledge of our oral histories and traditions is fast declining.

We envision a heritage center with not only culture aspects, but educational as well: such as curatorial displays, historical research facilities, archives--and a commercial aspect that will be a boon to the economy of the region as a whole. We submit that such an Indian enterprise of world class stature, equal to any other in the United States or elsewhere, would be most appropriate in Phoenix on the site of the Phoenix Indian School. We in the NAHP strongly believe that the citizens of our nation do not wish to permit the cultures and histories of the Native American peoples to vanish. Therefore, we say that now is the opportune time, with the opportunity before us, to create a national Indian cultural center for the year-round enjoyment and benefit of Indian and non-Indian alike.

We acknowledge and recognize that, initially, the Phoenix Indian School property was part and parcel a bequest of land by the citizens of the Territory of Arizona for the benefit of Indians. Over the ensuing years the school has served tens of thousands of Indian young people and thus become a living history of Indian people from generation to generation. The particular location of the Phoenix Indian School property provides the ideal foundation for a utilization plan which will benefit all of us. It can be the cradle, . and will inspire the restoration of the spirit of understanding and brotherhood among all the peoples of our nation.

We come here today to testify that the greatest need of all nations in the world today is that spirit of understanding and brotherhood.

We are keenly aware that the education needs of our Native American people is far from being sufficiently served. We are also aware that time brings change and advancement. The Phoenix Indian School has apparently served its purpose as a high school. It is time, now, that we take on another education need. We visualize the inclusion of college preparatory faciities in the comprehensive Native American Heritage Preserve to more adequately prepare Indian young people and others to cope with the challenges of mainstream America. Such an education program will maximize the utilization of the research facilities, archives and other cultural facilities of the heritage preserve.

To help support and enhance the cultural aspects of the preserve, an Indian market can be established that will be on par with or superior to any similar enterprise anywhere. Not only will it draw on the native talents and abilities of the Indian people, it will also gainfully occupy them in activities in which many of them are most comfortable, and in which they excel.

Phoenix is one of the hubs of Indian country, ideally located because of easy accessibility to all transportation services, commerical lodging facilities, restaurants, and within easy distance of other services that will support and enhance the region-wide tourist industry. It is blessed with a climate that is conducive to a year-round season for various segments of the cultural complex.

We believe that many existing buildings can be utilized at the outset to embark on our mission to establish the Native American cultural center; and we believe this will ease the process of restoration and preservation of historic buildings. Because Indian peoples are vigorously attached to the natural environment, any institution reflecting Native American lifeways must, of necessity, include environmental factors. For this reason, we envision the establishment of a park as an integral part of the cultural preserve, to be enjoyed by all of our citizens.

We see there is a need for housing various federal, state, and tribal agency program offices in one place, thereby making it easier for Indian people to acquire services of different kinds, including social services. Provision of office space for such program services at the cultural center will generate income for the Heritage Preserve and contribute towards its self-sufficiency.

It is important to point out that we view the cultural aspects of the Heritage Preserve to operate on the principles of self-support and self-sufficiency. We in the Native American Heritage Preserve are mindful of the popular notion that Indian people should be brought into the mainstream of America. We believe that this notion should now be applied to our Indian organization as well. The purpose of the NAHP is to establish a cultural and historic center on the Phoenix Indian School property, and to serve as guardian and trustee of the center. In carrying out these purposes, NAHP proposes to go to the corporate community, foundations, and interested individuals for the necessary financial support to accomplish its goals, just as it is done in mainstream America.

In short introductory statement and a brief amount of time, it is not possible to enumerate in any detail all of the activities that can potentially be carried on in the kind of cultural facility that we envision.

We are, however, submitting for the record supporting documents that present in more detail the factual information that will be necessary for a full and fair consideration of our proposal.

While we recognize and appreciate the hard work of all concerned in arriving at the solutions being proposed in the legislation now pending before you, we feel it falls short of meeting the needs and aspirations of our state, the Indian nations, and our nation as a whole.

We feel that our proposal best meets those needs and aspirations, and we offer it as a better alternative and substitute for what is now before you for consideration.

Mr. Chairman and members of the Select Committee, we thank you for giving us time to testify on this important matter today. We will be happy to answer any questions you may have regarding our testimony.

Thank you.

NATIVE AMERICAN HERITAGE PRESERVE
37 E. INDIAN SCHOOL RD
PHOENIX, AZ 85012

NATIVE AMERICAN HERITAGE PRESERVE

Proposed Utilization Plan
Phoenix Indian High School Property and Facilities

This Proposal Plan consists of five Sectors (as defined - in sheet A).

1. Revenue Generating
2. Education
3. Human Services
4. On Site Support Facilities
5. Public Park

The Revenue Generating Sector will give the basic support needed, to allow Preserve to be Independent of Tax Payer Dollars and of the multi-String Bureaucracy. There will be supplemental Revenue From Sectors 2, 3, and 4.

Organization and Construction Funds will come from the private sectors. Preliminary contacts with "Three Fortune 500 Corporations" indicate enthusiastic support of a well planned National Heritage Preserve.

Pre-Comprehensive Business and Building Plan figures on sheets reflect 1988 costs. These figures are derived, "Worst Scenario".

NATIVE AMERICAN HERITAGE PRESERVE

37 E. Indian School Road
Phoenix, AZ 85012
(602) 264—7080

SHEET A

Five Sectors

1. Revenue Generating
    - (a) Museum
    - (b) Culture Center
    - (c) Living History
    - (d) Amphitheater and Auditorium
    - (e) Crafts Center
    - (f) Convention Center
2. Education
    - (a) Academic
    - (b) Supplemental
    - (c) Vocational
3. Human Services
    - (a) Old Age Assistance
    - (b) Alcohol and Drug Abuse
    - (c) Employment Preparedness and Assistance
    - (d) Counseling Services
    - (e) Day Care
4. On Site Support Facilities
    - (a) Dorms and Apartments
    - (b) Cafeteria
    - (c) Support Facilities
    - (d) Administration
5. Public Park
    - (a) Ramadas
    - (b) Water and Electricity
    - (c) Lake

NATIVE AMERICAN HERITAGE PRESERVE

37 E. Indian School Road
Phoenix, AZ 85012
(602) 264—7080

CULTURAL AND HISTORIC CENTER

	Annual
* Economic Impact - Local and State Visitors	
International and Out of State	750,000
State and Local	300,000
Total Visitors	1,050,000
* Direct - Dollar Impact $81.26 per person per day for 2 days	
International and Out of State	$ 121,890,000.00
State and Local - 1 day	24,780,000.00
Subtotal	$ 146,670,000.00
* Indirect - Dollar Impact	
Visitors to Other Sites	250,000
Visitor Stay - 2 days $81.26 per person	$ 20,315,000.00
Total Dollar Impact	$ 166,985,000.00
State Tax Revenue	$ 11,185,990.00

* See Rationale

NATIVE AMERICAN HERITAGE PRESERVE -

37 E. Indian School Road
Phoenix, AZ 85012
(602) 264-7080

CULTURAL AND HISTORIC CENTER
ECONOMIC IMPACT -- RATIONALE

ATTRACTION AND IMPORTANCE

Nowhere in this country or the world is there a complex dedicated specifically to the preservation of the history and culture of the original inhabitants of the North American continent.

The need to act now to preserve this history and culture is borne out in the fact that perhaps the last generations which carry this knowledge are swiftly fading away. We are at a point in our history where we are faced with the final opportunity to preserve this knowledge, or it will be lost forever.

ATTENDANCE

The magnetism of this endeavor to establish a living history and cultural complex is the human instinct to reach out and touch the past, and to know those who nurtured and walked the land before us.

COSTS AND FIGURES

These figures are derived from an A.S.U. study (provided by the Arizona Tourist Bureau).

EUROPEANS HOLD KEEN FASCINATION FOR AMERICAN INDIAN CULTURE

Of the 45,900 people who took the time to hike into steep sandstone canyons in 1987, to look at cliff dwellings, more than 40% were European vacationers.

For a national monument that does not receive much publicity and is at the end of a ten-mile road deep inside the Navajo Indian Reservation, these figures are startling.

The largest collection of Anasazi artifacts is located in Denmark. Many Europeans are very knowledgeable about the Anasazi culture and it appears that Europeans have more interest in American Indian culture than most Americans do.

The Four Corners area of Arizona, Utah, Colorado and New Mexico is often visited by vacationing Europeans, mostly German, French and Belgian. They often try to see as many national parks and monuments that have Anasazi ruins as they can.

Many of the foreign visitors, more recently including the Japanese, are the backpacker and hiking types, not the road tourists.

Among the first archaelogists who probed the Indian ruins in this area were Danes, hence a large collection of artifacts is exhibited in Denmark.

Park service rangers have said that many Americans passing through the reservation on U.S. 160 see the Navajo National Monument sign and then expect to find a "monument", instead of cliff dwellings.

There are 28 major Native American Indian museums in West Germany. The Germans have an incredible knowledge and interest in the American West and many visit our national parks and museums.

Because of a favorable rate of exchange, an even higher number of European visitors are expected this year.

PROGRAM DELIVERY

EDUCATION

1. Transitional -- Student and Non-Student
   - a. High School Graduates from Reservation Schools desiring to continue on to mainstream Universities and Colleges
   - b. Non-Students -- Individuals transisting from Reservation to Urban Life
   - c. Career Enhancement
   - d. Other -- This will be programs developed with dialogue and input from Tribes as to educational needs that can be responded to only outside of the Tribal System. These programs will be Tribal guided at NO expense to the Tribes.

HUMAN SERVICES

1. Urban
   - a. Make available and encourage Indian Social and Welfare Units to locate in this facility. Offer to referral units an independent action system which they can utilize to enhance their existing programs.
   - b. Encourage County, State, and Federal agencies to locate here by offering space and qualified personnel.

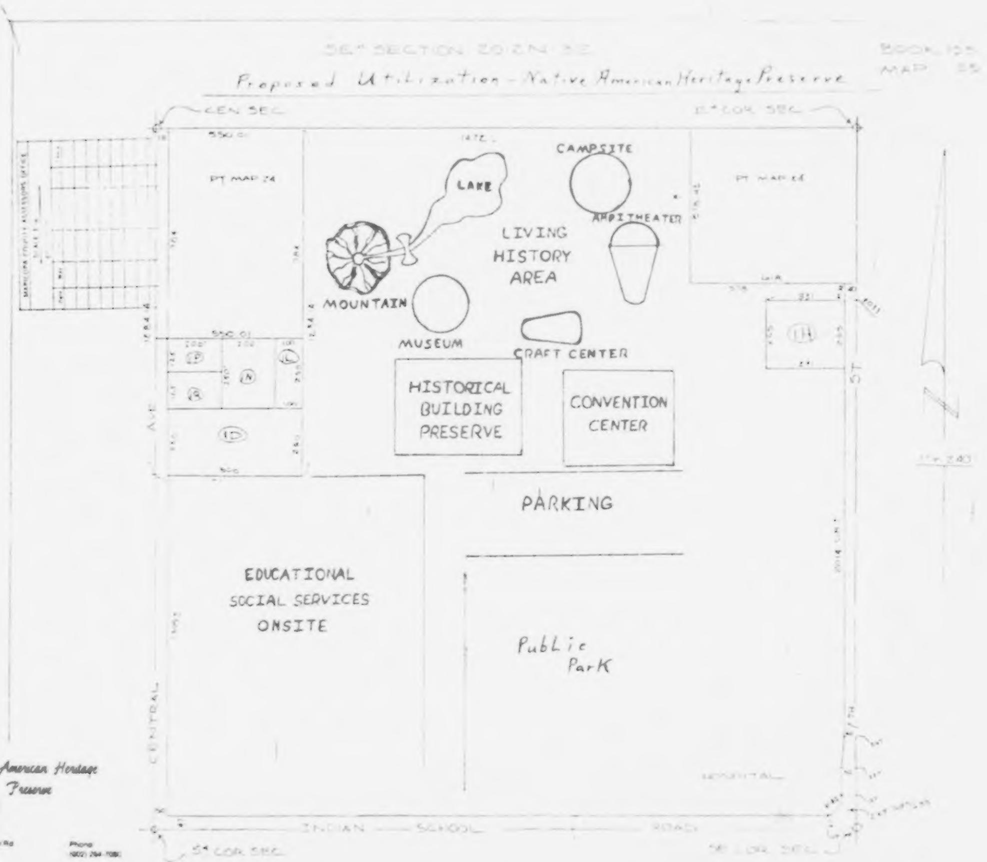
HUMAN SERVICES (continued)

2. Urban and Tribal
   - a. Actively seek National and World-Wide Organizations that can enhance and aid Indian Social and Health Services. Provide the organizational link-up when requested by Indian Organizations and Tribes.
   - b. Promote Indian Health Education
   - c. Research, with input from Indian Organizations and Tribes, the needs of Indian Elderly -- and, with their cooperation, respond to those needs. A high priority area -- Nursing Care facility where Indian Elderly can live and be with their own kind, and be cared for by their own people.
   - d. Complete employment program:
     - (1) Job placement
     - (2) Interview preparedness
     - (3) Counseling in problem areas
     - (4) Assistance in enhancing work skills
   - e. Day Care -- Infant to Teen

NATIVE AMERICAN HERITAGE PRESERVE
Proposed Utilization of Phoenix Indian School Property

ESTIMATED CONSTRUCTION COSTS

Museum Building -- 1. Archives 2. Culture	30,825 Sq. Ft.	$ 2,835,900.00
Craft Center --	15,000 Sq. Ft.	1,380,000.00
Auditorium -- Amphitheater	39,150 Sq. Ft.	3,583,500.00
Convention Center --	60,000 Sq. Ft.	3,600,000.00
Administration --	15,000 Sq. Ft.	1,350,000.00
Education -- 8 Buildings	40,000 Sq. Ft.	2,400,000.00
Social Services -- 6 Buildings	30,000 Sq. Ft.	1,800,000.00
Restoration -- Historical Buildings 1. Dining Hall 2. Memorial Hall		500,000.00
Living History Site Indian Camp Sites -- 80		2,000,000.00
Landscaping		1,100,000.00
Site Work		750,000.00
TOTAL ESTIMATE		$ 21,299,400.00


SE¼ SECTION 20-2N-3E
BOOK 155
MAP 35
Proposed Utilization - Native American Heritage Preserve
CEN SEC
E¼ COR SEC
PT MAP 24
PT MAP 26
LAKE
CAMPSITE
AMPITHEATER
LIVING HISTORY AREA
MOUNTAIN
MUSEUM
CRAFT CENTER
HISTORICAL BUILDING PRESERVE
CONVENTION CENTER
PARKING
EDUCATIONAL SOCIAL SERVICES ONSITE
Public Park
CENTRAL
AVE
INDIAN SCHOOL ROAD
ST
S¼ COR SEC
SE COR SEC

Native American Heritage Preserve

37 E. Indian School Rd
Phoenix, AZ 85012

Phone
(602) 264-7080

Ft. McDowell Mohave-Apache
Indian Community
P O Box 17779
Fountain Hills, Arizona 85268

Mr. Richard Young, Executive Director
N.A.H.P.
37 E. Indian School Road.
Phoenix, AZ 85012

Dear Mr. Young:

After a review of the Native Heritage Preserve's Plan, the "Preservation of Native Indian History", it is my opinion that, the time is now, to take positive action.

I therefore state, I support, in principal, the action of the Native American Heritage Preserve, in regards to the Preservation of Native American Indian History.

With Best Regards,

Clinton Pattea
President, Tribal Council

Shelby Austin
REALTY
SHELBY AUSTIN
Broker

August 8, 1988

Mr. Richard Young, Executive Director
Native American Heritage Preserve
37 East Indian School Road
Phoenix, Arizona 85012

re: PHOENIX INDIAN SCHOOL PROPERTY

Dear Mr. Young:

My family came to Phoenix, Arizona in the year 1930 and we were greeted by many wonderful Indian people who displayed their beautiful arts and crafts, blankets, rugs, jewelry and painted pottery, things we don't see today. Since that very day we have had an opportunity to get to know and understand the Indian of the Southwest culture and he in turn has got to know the world of the non-Indian. If it were not for the Indian School this would have never happened.

We understand that your Organization, Native American Heritage Preserve, proposes to build and develope a World Class Indian Cultural Center for the culture, education and health for all the Indian Tribes and Indian people of the United States of America and the other countries of the free world. We commend you and join you in your efforts to use the existing Phoenix Indian School property to be utilizied for this purpose. We fully support you in this endeavor and believe that this almost one hundred year old institution will continue to serve the Indian and the non-Indian, and preserve the culture and understanding for generations to come.

My kind personal regards,
Very Truly Yours,

Shelby Austin, Broker
SHELBY AUSTIN REALTY AND INVESTMENTS

SA/ms

1419 NORTH 24TH STREET PHOENIX, ARIZONA 85008 TELEPHONE (602) 273-9988

FLOYD E. JOHNSON
2455 WEST SAINT MORITZ LANE
PHOENIX, ARIZONA 85023

7th August 1988

Mr. Richard Young, Executive Director
Native American Heritage Preserve
37 East Indian School Road
Phoenix, Arizona 85012

Dear Richard,

I am writing to reaffirm my continued support for your group's efforts to create a Native American cultural center at Phoenix Indian School. I strongly support these efforts and congratulate you for the fine work you have already done.

Given the long history of broken promises to the American Indian by the United States Congress, I am just a concerned citizen who does not wish to see America break yet another promise.

I am concerned for many reasons. The House Bill to swap Indian School for swamp land in Florida is tainted in several substantive respects.

1. It is my understanding that the land at Indian School was deeded "in trust" to the United States Congress in 1891 and "in perpetuity" by the citizens of Arizona for the benefit of American Indians.
2. The Florida swamp land being offered in trade could easily and otherwise be acquired by Congress under rights of "eminent domain" (i.e., condemnation), much as property is now being taken from the citizens of South Phoenix (mostly of Mexican extraction) to build freeways and office complexes more "befitting" the needs of a growing Phoenix.
3. The $34 million cash being offered by Barron Collier enterprises would not even be paid immediately to Arizona tribes, but would only be paid over the next 20 years. I cannot imagine any developer finding such a deal unattractive, i.e., being allowed to buy prime city property in the heart of Phoenix with an I.O.U.

I do not understand Morris Udall's sponsorship of this bill. I have given you Barry Goldwater's very negative reaction to it. But I have every confidence that the justice of our position will be recognized and that we shall win.

Please continue to call on me for any help I can give you.

Sincerely yours,

Floyd

Floyd E. Johnson

Barry Goldwater
P. O. BOX 1601
SCOTTSDALE, ARIZONA 85252

August 4, 1988

Mr. Floyd E. Johnson
2455 W. Saint Moritz Lane
Phoenix, AZ 85023

Dear Floyd:

That which you ask me to do, is something I wish I could do, but cannot. I'm not allowed to get more active than I presently am, which isn't much.

I think the Indian School problem, giving away that Indian School, is the most disastrous, stupid, unthoughtful thing, that anybody ever connected with Arizona ever agreed to. While I was still in Congress, and they announced this thing, I said, if I were there it would be over my dead body. I still feel that way. Sorry I can't take on the job.

Sincerely,

Barry

Barry Goldwater

STATEMENT OF HONORABLE TOM LEWIS
Before the Select Committee on Indian Affairs
Concerning S. 2420 - Arizona-Florida Land Exchange Act

Monday, July 25, 1988

Thank you, Mr. Chairman, for the opportunity to testify in strong support of S. 2420, the Arizona-Florida Land Exchange Act.

First, allow me to compliment this Committee and especially the two gentlemen from Arizona, Senators McCain and DeConcini, for holding this hearing on S. 2420. Most Senators here today are probably aware that on Wednesday of this week, the House is scheduled to consider, and hopefully pass, H.R. 4519, the House version of the Arizona-Florida Land Exchange Act, which I am proud to have cosponsored.

As many House and Senate Members may recognize, the Arizona-Florida Land Exchange Act is an admittedly complicated piece of legislation. But what most Members may not fully understand is the tremendous benefits which this important and timely measure provides -- not only to Arizona and Florida -- but to the entire nation.

On April 29th of this year, President Reagan signed into law legislation sponsored by myself and Senator Lawton Chiles. This measure authorized a 146,000-acre addition to the Big Cypress National Preserve in South Florida. The bill before us today, S. 2420, is the means by which the Federal government can acquire 83,000 acres for that Big Cypress Addition -- all without spending one tax dollar!!

Now that alone is a good deal, but as those famous TV ads often say: "wait -- there's more!"

In addition to greatly reducing the cost of acquisition for the Big Cypress National Preserve Addition, S. 2420 also provides for the addition of 5,000 acres to the Florida Panther National Wildlife Refuge and the creation of the Ten Thousand Islands National Wildlife Refuge! In all, some 108,000 acres of land will be acquired and protected by the Federal government.

Now that's what I call a GREAT DEAL!

Clearly, there are other aspects to this important legislation and I am sure that these issues will be discussed thoroughly by others here today. But from a Florida perspective this bill is wonderful and certainly deserves our full support.

Mr. Chairman, I urge swift action by this Committee on S. 2420, and thank you for the opportunity to speak on behalf of the Arizona-Florida Land Exchange Act.

#5

United States General Accounting Office

GAO

Report to the Chairman, Committee on Interior and Insular Affairs, House of Representatives

MAY 11 1988

May 1988

LAND EXCHANGE

New Appraisals of Interior's Collier Proposal Would Not Resolve Issues

GAO/GGD-88-86

Executive Summary

Purpose

The Department of the Interior has proposed exchanging part of the land now used for the Phoenix Indian School, valued by Interior at about $85 million, for about 118,000 acres of privately owned land in four tracts near the Big Cypress National Preserve in Florida, valued by Interior at about $49 million, and a cash payment of about $35 million. The proposal is the largest interstate land exchange ever attempted by the Department, according to Interior officials.

The Chairman, House Committee on Interior and Insular Affairs, requested that GAO review Interior's real estate appraisals of the Phoenix Indian School and the Florida land and determine whether they are reasonable and reliable enough to provide a basis to proceed with the exchange or whether other appraisals would be advisable. (See pp. 8 to 11.)

Background

GAO retained the services of an expert consultant to assist in reviewing the already prepared appraisals of the land in Florida and Arizona to determine if they complied with professional standards, government guidelines, and other criteria that should be followed by appraisers and govern their judgment and opinions. Recognizing that the determination of real estate values is not an exact science, GAO used its consultant's analysis and other information to determine if the real estate worth of the properties as currently proposed for exchange was comparable. As the Chairman requested, GAO did not consider the environmental or other intangible benefits of the proposed exchange. (See pp. 11 to 12.)

Results in Brief

Interior's appraisals for three of the four Florida tracts generally met professional standards and government guidelines. The appraisal for the fourth tract, performed by a contractor for the State of Florida and accepted by Interior, did not comply with professional standards and could be overvalued by about $3 million to $4 million—which is less than 5 percent of the proposed transaction.

The appraised value of the Phoenix Indian School site, however, is speculative because it is based on a conjectural assumption as to the density of development the City of Phoenix would allow. Interior's proration of the appraised value to reflect changed plans for the property and failure to provide for possible future value increases are, in GAO's opinion, additional objections to the transaction.

Administration hospital for expansion is contrary to the basis on which appraisals are made.

Interior's tentative contract with the owners of the Florida properties allows them 3 years to accept the exchange after the contract is finalized, without providing for recognition of any escalation in value. GAO believes that an agreement that defers the possible exchange of land for several years should reflect that the future worth could be substantially more than the present worth of the property. (See pp. 18 to 21.)

Recommendations

GAO is making no recommendations on reappraising the school site because the fair market value of the school site cannot be resolved by the appraisal process until the density of development is determined. GAO's work did not consider whether or not the proposed exchange could be justified on other grounds, such as environmental benefits. (See p. 21.)

Agency Comments

GAO did not obtain official comments on this report from the Department of the Interior or other interested parties. However, GAO discussed the matters contained in this report with the Assistant Secretary for Fish and Wildlife and Parks who agreed with GAO's overall facts. He did not, however, agree with GAO's conclusions in two respects. First, he did not believe that Interior should insist on sharing the possible future escalation in value in the Phoenix Indian School property if the Florida property owners choose to defer completion of the contract. Second, he believed that in spite of the uncertainty of the allowable density in the Phoenix property, Interior's prorated value was reasonable and rational and did provide a basis to proceed with the exchange. GAO does not believe that either of these positions adequately recognizes the government's interests in the Phoenix property's value.

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According to the Assistant Secretary of the Interior for Fish and Wildlife and Parks, the exchange allows the acquisition of two additions to the Big Cypress National Preserve and two proposed national wildlife refuges without incurring current budget expenditures or adding to the federal debt. Furthermore, the exchange would result in a cash payment of about $35 million by the Colliers, which the government intends to use for the benefit of the Indian tribes historically served by the school. Interior considers the Florida lands to be valuable as they provide protection of the endangered Florida panther, Florida manatee, and the American bald eagle and contribute to the preservation of the natural water flow of the Big Cypress watershed. Figure 1.1 shows the location of the four Florida tracts.

As currently proposed, the Colliers would receive 72.9 acres of the Indian School property, valued by Interior at about $85.3 million, for about 118,000 acres of their land which has been valued by Interior at about $49.4 million. The Colliers would also pay Interior $34.8 million in cash to roughly equalize the values. Table 1.1 shows the appraised values of the lands involved in the exchange, as well as the values for each parcel agreed upon in negotiations between the Collier family interests and Interior, as of March 24, 1988.

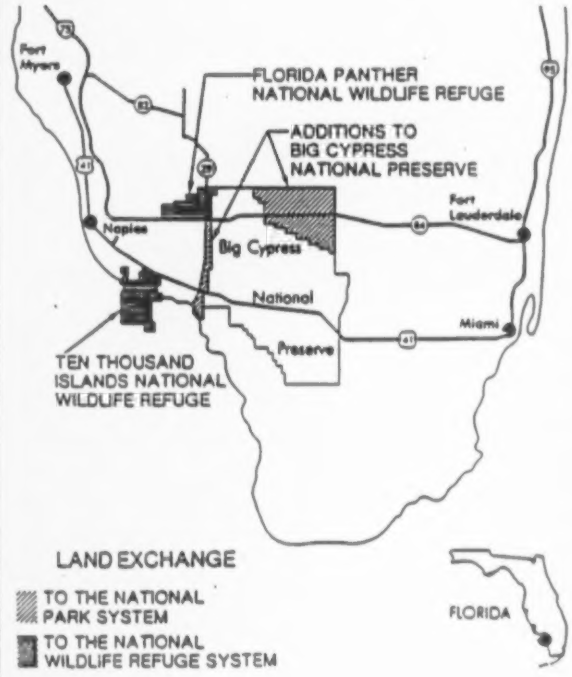
Table 1.1: Appraised and Negotiated Values for the Exchange as Currently Proposed

Dollars in millions

	Appraised		Negotiated	
	Acres	**Value**	**Acres**	**Value**
Phoenix Indian School Site	104	$122.2	72.9	$85.3
Florida Property				
Big Cypress Addition	70,010	27.9	70,010	26.6
Big Cypress Strip	13,059	8.1	13,059	10.6
Florida Panther	30,586	10.7	15,573	6.4
10,000 Islands	15,384	4.5	19,620	5.8
Subtotal			**118,262**	**49.4**
Plus Cash Payment				34.8
Total				**$84.2**

Source: Department of the Interior.

Figure 1.1: Location of Florida Tracts


75
Fort Myers
82
FLORIDA PANTHER NATIONAL WILDLIFE REFUGE
95
ADDITIONS TO BIG CYPRESS NATIONAL PRESERVE
41
29
Fort Lauderdale
Naples
84
Big Cypress
National
Miami
Preserve
41
TEN THOUSAND ISLANDS NATIONAL WILDLIFE REFUGE
LAND EXCHANGE
TO THE NATIONAL PARK SYSTEM
TO THE NATIONAL WILDLIFE REFUGE SYSTEM
FLORIDA

Source: Department of the Interior.

Note: Not to scale.

did we consider intangible benefits of the exchange, such as environmental values of the properties. We inspected the Florida tracts and major comparable Florida properties by helicopter and toured the Ph nix Indian School.

We retained the services of a consultant, Mr. John D. Dorchester, Jr., President of the Real Estate Research Corporation, to assist us in reviewing the appraisals. His firm was recommended by the General Services Administration and the American Institute of Real Estate Appraisers. Mr. Dorchester is a Member of the Appraisal Institute and Counselor of Real Estate. He has over 30 years of real estate analysis experience for private, corporate, and government clients, and was th 1982 National President of the American Institute of Real Estate Appraisers.

Our consultant assisted and advised us in (1) evaluating the assumptions, approaches, and limiting conditions of each appraisal; (2) determining if each appraisal complied with generally recognized professional standards and the Uniform Appraisal Standards for Federal Land Acquisition published by the Interagency Land Acquisition Conference in 1973; (3) judging the soundness of the "highest and best use" and appraised value for each appraisal; (4) determining whether other appraisals would be advisable for each property; and (5) determining if the "comparables" — recent sales of property in the same vicinity—used in the Florida appraisals were in fact comparable in size amount of area covered by water, and other relevant characteristics.

At the request of the Committee, we did not obtain official comments from the Department of the Interior or other interested parties. We did obtain informal comments on our facts and analysis from the Assistant Secretary of the Interior for Fish and Wildlife and Parks, however, and incorporated them in this report as appropriate.

We did our work from November 1987 to March 1988 in accordance with generally accepted government auditing standards.

failure to explain how this was done resulted in over or undervaluatio of the properties. That is, even though the appraisal reports were deficient in explaining the disposition of relative amounts of wetlands/uplands, they contained sufficient information for us to conclude that they arrived at acceptable values.

State of Florida's Appraisal

The approved appraisal for the Big Cypress Addition, performed by a contractor for the State of Florida, had significant shortcomings. The state had three contract appraisals for this tract to determine the takin value and severance damages (see "damage value" in glossary) for the planned construction of Interstate 75 on this property. Interior planne to use the remainder value as the basis for negotiating with the Collier for this tract.

The state approved the highest appraisal for this tract. Our consultant' review of this appraisal pointed out that it had several technical weaknesses and at least two major defects from a professional perspective. We believe the major defects were that the state-approved appraisal di not support its conclusions and its premise that there is a premium value to this tract because of highway frontage.

As shown in table 2.1, the major difference between the three appraisal was in the values determined for the "before" and "damage" (resulting from Interstate 75) values. The approved appraisal had significantly higher amounts for these values than the first two appraisals. However, the "remainder" values for all three appraisals were much closer than the before and damage values. The first two appraisals were completed in November 1986, whereas the third appraisal was completed in March 1987. The state asked the first two appraisers to update their appraisal after the third appraisal was received and consider additional comparable sales that were used by the third appraiser, which was done.

Table 2.1: Big Cypress Addition Appraisals

Dollars in millions

	First Appraisal[a]	Second Appraisal[a]	Thir Appraisal
Before Value	$32.0	$38.3	$56.5
Damage Value	9.4	14.4	28.8
Remainder Value	$22.6	$23.9	$27.7

[a] As updated

[b] Appraisal approved by the State of Florida

Phoenix Indian School Property

The most significant problem with the Collier Exchange is the conjectural nature of a determination of the value of the Phoenix Indian School. The driving force behind the value of the school property is the density of development that the City of Phoenix will allow on the site. This is now an unknown that cannot be resolved by any appraiser. Further, Interior's proration of the value of the land on an average value per acre and the lack of a provision for a possible future increase in the property's value do not adequately recognize the government's interests in the Phoenix property's value. Primarily because of the unknown value of the school property, we believe Interior's appraised fair market values do not provide a basis to proceed with the exchange as it is currently proposed, nor do we believe that additional appraisals would resolve the matter until rezoning has taken place.

Two Interior Appraisals

Interior had two contractors, Nolan and Lee, appraise this property. The Albuquerque, New Mexico, office of the Fish and Wildlife Service handled the contracting for both appraisals. Officials in that office informed us that the initial oral directions from Interior officials in Washington were to get one appraisal, to allow 2 days to prepare a government estimate, and to allow the appraisers a few weeks rather than the normal time frame of several months. They said, however, that ultimately normal procedures were followed in obtaining the appraisals.

Although neither of the reports identified the rights being acquired by the purchaser, they met professional standards in all other respects. However, their conclusions on the amount of space that could be built on the site, and consequently the values they estimated, differed greatly.

The Nolan appraisal, completed in February 1987, concluded that the value of the school site was $160 million using the income approach (see glossary). The report also stated that the value would be $220 million using the comparative, or market, approach (see glossary). Nolan's report stated that the $220 million was then discounted to reflect the absorption rate (see glossary) he assumed, which equaled the $160 million value determined by the income approach. However, the Nolan report did not show the actual mathematical computations or explain the reconciliation of the two values. The Lee appraisal, which was based on the comparative approach, concluded that the value would be $122 million. The difference of opinion between the two appraisers using the one approach they have in common—the comparative approach—amounts to $98 million.

appraisal to estimate the value of the property. Until the city decides on the density of development it will allow on the site, we believe it is not realistic to estimate the value of this property and, hence, whether the exchange as proposed is economically advantageous to the government.

On February 23, 1988, when we briefed the Chairman and the Arizona congressional delegation on our work, the delegation decided it would ask the City of Phoenix to decide on the allowable density of the Indian School site and to have the land reappraised on the basis of the city's decision. In a February 29, 1988, letter, the Mayor of Phoenix advised the Chairman that it was not possible to provide the Arizona delegation a statement of the city's position on future zoning of the school property because the zoning changes must proceed according to locally established processes designed to ensure that community needs and private interests are balanced.

Proration of Approved Appraisal

When the school site was appraised, Interior assumed that the full site, approximately 104 acres, would be exchanged for the Florida properties. Since then, Interior has revised its plans and now intends to sell 20 acres to the city for a park and give 11.5 acres to an adjacent Veterans Administration hospital for expansion. To reflect this change, Interior said that it prorated the approved $122 million value on an average value of about $1.17 million per acre.

The appraiser who performed this appraisal told us that he had assumed that about 8 acres, located in the more valuable portion of the land (see fig. 3.1 for his development plan), would have to be dedicated to the city for a park, and that whatever private sector entity acquired the property would have to negotiate with the Veterans Administration, which wants to acquire a portion of the site.

When we asked Lee if he agreed with Interior's proration, he informed us by letter that:

> "Essentially, the modification of these two major assumptions totally invalidates the appraisal report prepared under my signature and dated March 24, 1987. I can state unequivocally that any manipulation of or allocation of the value estimate contained in our original report on a price per square foot or, more ridiculously, on a price per acre basis would be ludicrous. You are violating the appraisal principle of contribution."

In fact, he said that the net effect of reclaiming the 8 acres of land in the more valuable area of the tract could result in a significant increase in value of the remaining portion, rather than a presumed reduction in the value of the property. Our consultant agreed that proration is contrary to the basis on which appraisals are made and that Interior's action is an inappropriate use of the Lee appraisal.

City of Phoenix officials told us that they would expect a developer of such a large site to deed at least 20 acres to the city for a park at no cost as a form of concession to authorize development. Therefore, we question the reasoning of reducing the exchange value of the property by $1.17 million per acre for the 20 acres, since the government is relieving at least some of the obligation a developer would normally assume in Phoenix.

Possible Escalation in Value

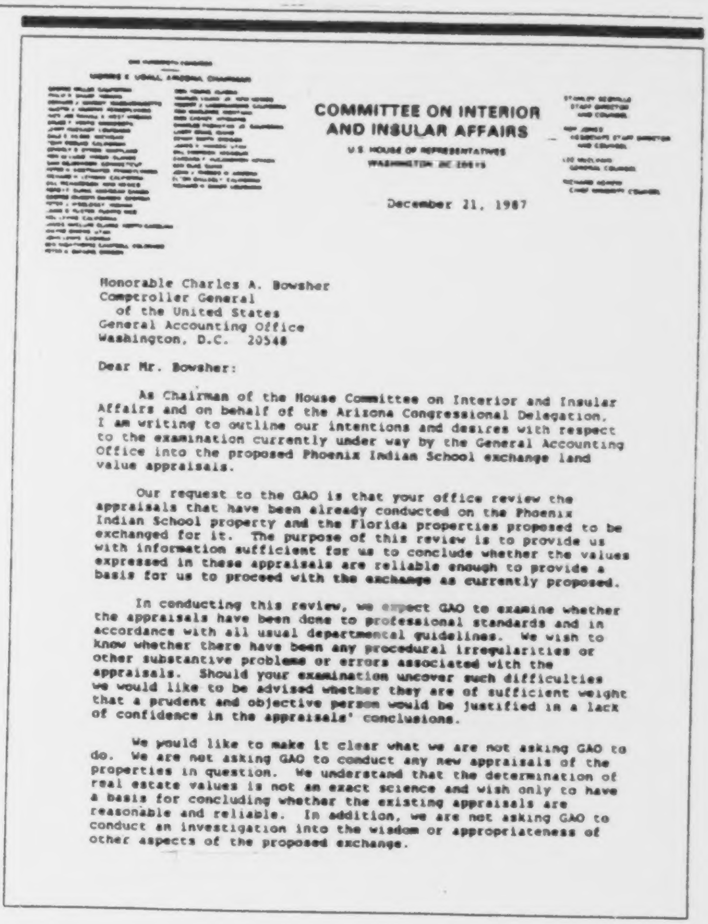
The tentative contract between the Colliers and Interior allows the Colliers 3 years to accept the exchange after it is signed, without providing for any recognition of escalation in value. In the meantime, the government bears carrying costs of the land whereas the Colliers would be liable for property taxes if the transaction were concluded sooner. Interior's appraisal reports indicated that while the Florida properties have stabilized in value and have not significantly changed in price over the past 5 or more years, Phoenix land values have escalated rapidly in recent years, notably in the area of the Phoenix Indian School. The appraiser for the approved report on the Phoenix Indian School site told us that while land in Phoenix has not increased in the past year, he believed that the school land would appreciate about 12 percent annually over the next 3 years.

The Assistant Secretary, in commenting on our findings, told us that the tentative contract with the Colliers did not provide for increased value in the school property because: (1) the value of the school land is contingent on the Colliers' ability to rezone the land; (2) Interior believes that the land in Florida will also appreciate; (3) if the Colliers decide not to accept the exchange, Interior can buy the Florida land at the negotiated amounts; and (4) Interior has to accommodate the City's desire to allow the Colliers time to rezone the land.

A prominent commercial real estate attorney in Phoenix told us that he was not aware of any seller in Phoenix who would tie up property more than 12 months without some assurance of benefitting from an increase in its value. We believe that a prudent seller engaged in a transaction

Appendix

Letter From the Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives



COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 21, 1987

Honorable Charles A. Bowsher
Comptroller General
of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Bowsher:

As Chairman of the House Committee on Interior and Insular Affairs and on behalf of the Arizona Congressional Delegation, I am writing to outline our intentions and desires with respect to the examination currently under way by the General Accounting Office into the proposed Phoenix Indian School exchange land value appraisals.

Our request to the GAO is that your office review the appraisals that have been already conducted on the Phoenix Indian School property and the Florida properties proposed to be exchanged for it. The purpose of this review is to provide us with information sufficient for us to conclude whether the values expressed in these appraisals are reliable enough to provide a basis for us to proceed with the exchange as currently proposed.

In conducting this review, we expect GAO to examine whether the appraisals have been done to professional standards and in accordance with all usual departmental guidelines. We wish to know whether there have been any procedural irregularities or other substantive problems or errors associated with the appraisals. Should your examination uncover such difficulties we would like to be advised whether they are of sufficient weight that a prudent and objective person would be justified in a lack of confidence in the appraisals' conclusions.

We would like to make it clear what we are not asking GAO to do. We are not asking GAO to conduct any new appraisals of the properties in question. We understand that the determination of real estate values is not an exact science and wish only to have a basis for concluding whether the existing appraisals are reasonable and reliable. In addition, we are not asking GAO to conduct an investigation into the wisdom or appropriateness of other aspects of the proposed exchange.

Glossary

Absorption Period	The time it would take the general market demand for space to absorb, or take up, the increased supply of space from new construction.
Before Value	The market value of an entire tract of property before a part of it is taken, or severed.
Comparables	Recent arm's length sales of property in the vicinity of the property being appraised.
Comparative Approach	A method to value property whereby recent sales of property in the vicinity are compared to the property being appraised on the basis of location, improvements, topography, transportation, utilities, and all matters which have an effect on market value pertaining to relative desirability. Also called market approach. Normally, this is the most direct and accurate method of estimating value.
Cost Approach	A method to value property whereby the fair market value of bare land is added to the depreciated reproduction or replacement cost of the improvements to arrive at an indication of the value of the property.
Damage Value	The amount of compensation an owner is entitled to for the loss in value to property when only a part of a tract is taken (taking value), which diminishes the value of the remainder of the property. Also called severance damage.
Fair Market Value	The amount in cash, or on terms reasonably equivalent to cash, for which in all probability property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy.
Floor-To-Area Ratio	The amount of buildable square footage in relation to the amount of land square footage on a property.
Highest and Best Use	The most profitable likely use to which a property can be put.

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